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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: PERFORADORA ORO NEGRO, S. DE R.L. DE C.V., *et al.* Debtors in a Foreign Proceeding.	BK Case No. 18-11094 (SCC) (Jointly Administered) (Chapter 15)
GONZALO GIL-WHITE, PERSONALLY AND IN HIS CAPACITY AS FOREIGN REPRESENTATIVE OF PERFORADORA ORO NEGRO, S. DE R.L. DE C.V. AND INTEGRADORA DE SERVICIOS PETROLEROS ORO NEGRO, S.A.P.I. DE C.V. Plaintiff, -against- ALP ERCIL; ALTERNA CAPITAL PARTNERS, LLC; AMA CAPITAL PARTNERS, LLC; ANDRES CONSTANTIN ANTONIUS-GONZÁLEZ;	Adversary Case No. 19-01294 (SCC)

ASIA RESEARCH AND CAPITAL MANAGEMENT LTD.; CQS (UK) LLP; FINTECH ADVISORY, INC.; DEUTSCHE BANK MÉXICO, S.A.; INSTITUCIÓN DE BANCA MÚLTIPLE; GARCÍA GONZÁLEZ Y BARRADAS ABOGADOS, S.C.; GHL INVESTMENTS (EUROPE) LTD.; JOHN FREDRIKSEN; KRISTAN BODDEN; MARITIME FINANCE COMPANY LTD.; NOEL BLAIR HUNTER COCHRANE, JR; ORO NEGRO PRIMUS PTE., LTD.; ORO NEGRO LAURUS PTE., LTD.; ORO NEGRO FORTIUS PTE., LTD.; ORO NEGRO DECUS PTE., LTD.; ORO NEGRO IMPETUS PTE., LTD.; PAUL MATISON LEAND, JR.; ROGER ALAN BARTLETT; ROGER ARNOLD HANCOCK; SEADRILL LIMITED; SHIP FINANCE INTERNATIONAL LTD.; and DOES 1-100

Defendants.

OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS THE COMPLAINT

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INTRODUCTION

This case has a long, tortured and sordid history involving a multitude of administrative, civil and criminal proceedings in the United States, México and Singapore. However, at bottom, this U.S. case involves a straightforward scheme hatched in New York by Defendants to illegally dispossess Integradora de Servicios Petroleros Oro Negro, S.A.P.I. de C.V. ("Integradora") and its operating subsidiary Perforadora Oro Negro, S. de. R.L. de C.V. ("Perforadora," and together with Integradora, "Oro Negro") of its principal assets: five state-of-the-art offshore drilling rigs ("Rigs") worth nearly a $1 billion and contracts worth nearly another $1 billion. Oro Negro leased these Rigs to its only client, Petróleos Mexicanos ("Pemex"), México's oil and gas monopoly with substantial operations in the United States and that is reportedly under both criminal and regulatory investigation for corruption by the U.S. Department of Justice ("DOJ") and Securities and Exchange Commission ("SEC").

Oro Negro filed this ancillary bankruptcy proceeding in large part in response to its international investors (collectively, "Bondholders") suing Oro Negro in New York under contracts governed by New York law seeking an order from a New York court to award them the Rigs. Oro Negro's filing resulted in a stay of the Bondholders' lawsuit and discovery into Defendants' misconduct.

That discovery has established that Defendants' scheme was orchestrated in New York by Defendants. [redacted]

[redacted]

As part of this scheme, Defendants have (1) violated numerous U.S. and Mexican bankruptcy court orders prohibiting any creditor—as is standard in any bankruptcy—from attempting to seize Oro Negro's assets; (2) instituted numerous criminal investigations and precipitated international arrest warrants against Oro Negro's executives based on plainly false and fabricated evidence; and (3) tried to unlawfully remove Oro Negro's liquidator and Gonzalo Gil-White ("Gil"), in his capacity as the foreign representative of Oro Negro ("Foreign Representative"), including by threatening him in New York with criminal prosecution if he did not withdraw this case.

As a result, Oro Negro's core management team is openly residing in the United States in exile, unable to return to México or travel internationally. Defendants—from New York—have destroyed Oro Negro and ruined the reputation of its executives, destroyed them financially and forced them into exile.

The motive for this scheme was simple: to seize the Rigs worth nearly $1 billion and obtain the Pemex Contracts worth another $1 billion without having to pay Oro Negro or its other creditors a cent.

[redacted] AMA, a New York-based maritime asset consultant and the consultant to the Bondholders, is responsible for developing and implementing [redacted]

[redacted]

The other members of the scheme are the Bondholders who own more than 60% of the bonds, which Oro Negro issued to raise $900 million in debt ("Bonds"), including Alterna Capital Partners, LLC ("Alterna"), which is also based in and operates from New York, and Maritime Finance Company, Ltd. ("MFC"), which was, until mid-2018, headquartered in Miami, as well as Asia Research and Capital Management Ltd. ("ARCM"), CQS (UK) LLP ("CQS"), GHL Investments (Europe) Ltd. ("GHL") and Ship Finance International Ltd. ("SFIL") (collectively, "Ad-Hoc Group"). The Ad-Hoc Group stood to gain a windfall because they purchased the Bonds at a severe discount and stood to obtain substantially more than the par value of the Bonds given the value of the Rigs and their plan to take over the Oro Negro Contracts.

SeaMex, S.A. de C.V. ("Seamex"), owned in equal parts by Seadrill, Ltd. ("Seadrill"), a company that trades on the New York Stock Exchange and recently emerged from Chapter 11 in the United States, and Fintech Investments, Ltd. ("Fintech Investments"), an investment vehicle managed by Fintech Advisory, Inc. ("Fintech Advisory"), a New York-based investment firm, is Oro Negro's primary competitor. It also has five rigs that it leases to Pemex and has, by far, the best contracts of any Pemex vendor. [redacted]

Nordic Trustee A.S. ("Nordic Trustee") manages the Bonds for the Bondholders, including by (among other things) distributing payments under the Bonds to individual Bondholders, and acts on behalf of the Bondholders by instructing Deutsche Bank México, S.A., Institución de Banca Múltiple ("Deutsche México"), the Mexican subsidiary of Deutsche Bank, AG ("Deutsche Bank"). Deutsche México serves as the trustee of a trust established by the Bondholders to receive payments from Pemex for services provided by Oro Negro. [redacted]

The Bondholders pursued their advantage around the world, filing legal cases in Singapore, New York and Norway, clearly willing to shop around for any forum that would give them what they wanted: control of the Rigs. And, when México did not deliver what they needed, they argued in other courts that México was not the proper place for this dispute.

In addition to civil litigation, the Bondholders instigated frivolous criminal proceedings against Oro Negro and its executives and employees, [redacted]

Ultimately, the scheme was successful. Defendants now have the Rigs and are trying to auction them off in the Bahamas, including potentially to themselves—that is, the Bondholders will bid on the Rigs to obtain them at a distressed price and likely win an unlawful windfall. They would then put the Rigs to work, thereby compounding their windfall.

Meanwhile, Oro Negro has been destroyed: (1) most of its employees have lost their jobs and are owed money; (2) Oro Negro's management is financially ruined, including because they funded Oro Negro while in bankruptcy to pay employees and maintain the Rigs, not the conduct of supposed criminals; and (3) Oro Negro's creditors have not been paid.

Oro Negro and its CEO have properly brought this case in this Court and have more than sufficiently alleged all of their claims. This lawsuit represents Oro Negro's only remaining assets: claims against Defendants governed by U.S. law for conduct by Defendants in the United States.[1]

This Court should deny Defendants' motions to dismiss for the following reasons:

I. Defendants argue for dismissal based on *forum non conveniens*, but this argument fails on several grounds.

First, Defendants disregard the strong presumption that the claims are properly brought in U.S. court. The presumption is especially strong here given that (1) there is a U.S. Plaintiff; (2) there are six Defendants from the United States (more than any other country) and several other Defendants with very substantial ties to the United States; (3) the lease agreements for the Rigs between each of its five owners ("Singapore Rig Owners")[2] and Perforadora (collectively, "Bareboat Charters") at the center of many of the claims contain a forum selection clause stipulating venue in this Court; (4) Plaintiffs seek relief for violations of U.S. law and this Court's prior orders; and (5) the conspiracy to tortiously interfere with Oro Negro's contracts and business relationships and seize control of the Rigs was directed from New York.

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[1] The Bondholders' criminal persecution of Oro Negro escalated after the filing of this Complaint. The Bondholders have pursued criminal actions against (1) Oro Negro; (2) two of its non-executive directors; (3) Plaintiff Gonzalo Gil; and (4) Oro Negro's former Chief Financial Officer and General Counsel. The most recent offensive is based on allegations of financial mismanagement in 2014 and 2015. The transactions at issue were the subject of a broad release that the Bondholders provided in connection with Oro Negro's 2016 bond debt restructuring. The Bondholders' efforts to turn what should not be a civil dispute into a criminal proceeding—and to seek international arrest warrants based on the same—illustrate the lengths to which the Bondholders are willing to go to destroy Oro Negro.

[2] The Singapore Rig Owners are (1) Oro Negro Primus Pte., Ltd. ("Oro Negro Primus"); (2) Oro Negro Laurus Pte., Ltd. ("Oro Negro Laurus"); (3) Oro Negro Fortius Pte., Ltd. ("Oro Negro Fortius"); (4) Oro Negro Decus Pte., Ltd. ("Oro Negro Decus"); and (5) Oro Negro Impetus Pte., Ltd. ("Oro Negro Impetus").

Second, México is not an adequate alternative forum. None of the non-Mexican Defendants has agreed to submit to jurisdiction in the Mexican courts, and this fact alone requires that the Court reject the argument for *forum non conveniens*. In addition, given the [redacted], it is implausible that the Mexican courts would be an adequate alternative forum to resolve Plaintiffs' claims. Indeed, Defendants themselves successfully argued in a Singaporean court that México was not an adequate alternative forum, and they are estopped from arguing otherwise here.

Third, private and public factors weigh strongly in favor of keeping this adversary proceeding in the United States. The access to evidence and witnesses will be far more efficient in the United States than in México, and Defendants identify no specific difficulty in litigating here. Moreover, the United States has a very strong interest in adjudicating this dispute given that [redacted]; (2) there are numerous U.S. Defendants; and (3) the case concerns violations of U.S. law and U.S. contracts.

II. This Court has personal jurisdiction over all Defendants. Thirteen Defendants object to the exercise of personal jurisdiction, but they all ignore the applicability of jurisdiction based on conspiracy. Given the Complaint's clear allegations of conspiracy, along with allegations of Defendants' participation and numerous acts in the United States in furtherance of the conspiracy, jurisdiction is readily satisfied. Regardless, nearly all Defendants individually committed acts in the United States directly related to the claims at issue here.

III. Defendants argue for dismissal based on the act of state doctrine, but fail to meet the requirements for that very narrow exception to the exercise of jurisdiction. *First*, a Mexican court has held that the acts of Pemex are commercial (not sovereign) acts, and they are thus not covered by the act of state doctrine. *Second*, Plaintiffs' claims do not require this Court to

invalidate any official act, as required for application of the doctrine. Plaintiffs seek only monetary damages from Defendants (not Pemex), and the act of state doctrine has never been applied to such claims. In any event, a Mexican trial court has ruled that Pemex breached the Oro Negro Contracts by unlawfully terminating them, and a governmental act that violates its own laws is not protected. *Third*, there are no comity concerns to justify application of the doctrine, particularly given that México and Pemex are not Defendants here. *Finally*, at a minimum, the act of state doctrine should not be applied at the pleading stage because the extent of the Mexican government's involvement in the action is disputed.

IV. New York law applies to Plaintiffs' tort claims. Defendants' arguments for the application of Mexican law rely largely on the erroneous legal premise that the place of injury is controlling. However, under Second Circuit precedent—that Defendants ignore—the place where the tortious conduct occurred determines the choice-of-law question. *See Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 672 F.3d 155, 158 (2d Cir. 2012). Here, the Complaint alleges that Defendants' tortious conduct [redacted] and courts consistently recognize this fact as sufficient for the application of New York law. [redacted] and (3) the Bareboat Charters were governed by U.S. law and stipulate to a New York forum. These additional factors further establish the applicability of New York law.

V. The Complaint's allegations more than suffice to plead the New York law claims.

For the claims regarding tortious interference with the Oro Negro Contracts and the relationship with Pemex, Defendants rely entirely on disputing the facts as alleged. In particular,

these include whether (1) Pemex would have terminated the Contracts regardless of tortious interference; (2) Defendants acted with malice or dishonesty; and (3) Seamex substantially assisted the Ad-Hoc Group. All of these issues are factual ones that cannot be decided on the pleadings, and the Complaint provides extensive allegations on these points that Defendants either disregard or simply dispute as a factual matter.

For the abuse-of-process claim, Defendants argue that such a claim cannot be brought with respect to abuse of foreign process. But the Second Circuit has recognized abuse of process claims involving foreign legal proceedings. *See Weiss v. Hunna*, 312 F.2d 711 (2d Cir. 1963). Defendants also argue that Plaintiffs have not stated a claim for malicious prosecution because the proceedings have not terminated in Plaintiffs' favor, but Plaintiffs are not bringing a malicious prosecution claim, and there is no such element for an abuse-of-process claim.

For the claim for tortious interference with the Bareboat Charters and the business relationship with the Singapore Rig Owners, Defendants argue that the Bareboat Charters terminated concomitantly with the termination of the Oro Negro Contracts, but a Mexican court has declared Pemex's termination invalid. Defendants also argue a defense of "economic interest," but that defense applies only where the party is protecting its stake in the breaching party's business, not (as here) where it is protecting its own interests.

For the claims for civil conspiracy, Defendants argue that the Complaint requires specificity about the details of the conspiracy, but there is no such requirement. Regardless, the Complaint alleges very specific facts about all of Defendants' participation in the conspiracy,

For the good-faith-and-fair-dealing claim, Defendants again erroneously rely on the argument that the Bareboat Charters allowed for their termination, ignoring that the termination of the Oro Negro Contracts was held invalid.

For the claim for breach of the Bareboat Charters with respect to reimbursement costs, Defendants simply ignore the factual allegations of the Complaint that establish such a breach.

For the unjust enrichment claim, Defendants argue that it is duplicative of other claims, but the elements of tortious interference do not duplicate unjust enrichment, and thus the claim cannot be dismissed as duplicative. Defendants also argue that the Singapore Rig Owners had a legal right to take over the Rigs, but the Complaint alleges that the Ad-Hoc Group illegally took control of the Singapore Rig Owners, removing them (and the Rigs) from Integradora's control.

VI. In the alternative, Plaintiffs state claims under Mexican law. Defendants argue that Mexican law does not recognize the particular tort claims brought under U.S. law. But this argument is misplaced because Mexican law recognizes a general rule of liability under a broad tort statute: Article 1910. The Second Circuit has recognized that Article 1910 provides an "open-ended" standard for liability based either on the violation of a statute or on actions against good customs and habits. *See Curley v. AMR Corp.*, 153 F.3d 5, 14 (2d Cir. 1998).

Here, there is a violation of the *Ley de Concursos Mercantiles*, which states that it is in the public interest to "preserve businesses and avoid that the generalized failure to pay debts places the viability of [businesses] at risk," and a violation of Mexican criminal law, which prohibits the pursuit of criminal proceedings through the fabrication of evidence. Defendants' arguments to the contrary again rest on disagreement with the facts as alleged. [redacted]

[redacted]

VII. Plaintiffs state a claim against the Ad-Hoc Defendants and the Singapore Rig Owners and their directors ("Singapore Directors")[3] (collectively, "Singapore Defendants") for violations of 11 U.S.C. § 1520 and this Court's order recognizing the *concurso* as the foreign main proceeding, staying the New York Litigation, and granting comity to the injunction orders issued by the Second District Court for Civil Matters of México City (*Juzgado Segundo de Distrito en Materia Civil en la Ciudad de México*) ("*Concurso* Court") ("Comity Order").

Defendants argue that the stay did not apply to Plaintiffs' possession of the Rigs because Plaintiffs' possession rights are not located in the United States, but as a matter of well-established law, Plaintiffs' rights under the Bareboat Charters are within the territorial jurisdiction of the United States given that those contracts require litigation of disputes in this Court under U.S. maritime law. Defendants also argue that they did not violate the stay in the Chapter 15 proceeding filed by the Singapore Rig Owners, *In re: Perforadora Oro Negro, S. de R.L. de C.V., et al*., Case No. 18-11094 (SCC) (Jointly Administered) ("Chapter 15 Proceeding"), because they seized the Rigs pursuant to a restitution order issued as part of a criminal proceeding. However, the seizure of the Rigs was not authorized by the Mexican federal judiciary (the competent authority) (and in fact was eventually annulled by Mexican judges) and was not carried out by state security forces; regardless, improperly motivated criminal proceedings are exempt from the stay. Defendants further argue they did not violate this Court's Comity Order because it supposedly did not order relief against the Singapore Rig Owners, but

[3] The Singapore Directors comprise (1) Roger Alan Bartlett; (2) Roger Arnold Hancock; and (3) Noel Blair Hunter Cochrane, Jr.

this is simply not correct: this Court's order prohibited *any* interference with Perforadora's possession rights under the Bareboat Charters.

VIII. This Court has jurisdiction over the abuse of process claims, and Plaintiffs do not lack standing. *First*, this Court has bankruptcy jurisdiction because the claims are brought by Gil personally and in his capacity as the Foreign Representative, and any damages would augment the estate of the debtor entities: Integradora and Perforadora. This suffices for related-to jurisdiction, and even if it did not, this Court should exercise supplemental jurisdiction under 28 U.S.C. § 1367. *Second*, Defendants argue that Gil does not have standing because he is no longer the Foreign Representative; however, they fail to recognize that the current Foreign Representative may be substituted for Gil, as this Court has done before under similar circumstances.

IX. Defendants argue that the adversary proceedings are outside Chapter 15's zone of interests, but cite no case ever dismissing adversary proceedings on this ground. Regardless, an action seeking recovery from the parties that drove Plaintiffs into insolvency, in order to augment the debtor's estate, falls within the core purpose of Chapter 15.

COUNTERSTATEMENT OF FACTS

A. The Parties[4]

1. The Plaintiffs

Plaintiff Gonzalo Gil is the former Foreign Representative and was the CEO of Oro Negro until the company was placed into liquidation in mid-June 2019. Compl. ¶ 9. He is a legal permanent resident of the United States residing in Miami, Florida. *Id.*

[4] Defendants Deutsche México, John Fredriksen ("Fredricksen"), Andres Constantin Antonius-González ("Antonius") and Garcia Gonzales y Barradas, S.A. ("GGB") are not addressed in this opposition and not discussed in this Counterstatement of Facts.

Plaintiff Integradora, a Mexican holding company, is the ultimate parent company of Oro Negro. *Id.* ¶ 96. Integradora, through its subsidiaries,[5] owns and operates platforms that drill for oil and gas offshore. It is owned by a combination of two Mexican pension funds (known in México as *afores*) and investors based in the United States, México and Europe. *Id.* ¶ 97. Plaintiff Perforadora is the wholly-owned operating subsidiary of Integradora that contracted the Rigs to Pemex. *Id.* ¶ 103.

Integradora and Perforadora are both in liquidation proceedings in México.[6] *Id.* ¶¶ 195, 198. They are represented in the underlying Chapter 15 Proceeding by Fernando Perez Correa, the current Foreign Representative. *See* Ch. 15, ECF 231.

2. The Ad-Hoc Group Defendants

The Ad-Hoc Group Defendants are (1) the members of the Ad-Hoc Group, which are the managers of funds or companies that hold the majority of the Bonds; (2) the Group's financial advisor, AMA; (3) the Group's Mexican lobbyist, Andres Antonius; (4) the Group's Mexican criminal law firm, GGB; and (5) the individual defendants (i) Alp Ercil, CEO of ARCM; (ii) Kristan Bodden, CEO of MFC; (iii) John Fredriksen, who ultimately controls SFIL and Seadrill; and (iv) Leand, CEO of AMA. Compl. ¶ 19.

AMA, Leand, Alterna and Bodden are all U.S. residents. *Id.* ¶¶ 20, 24,26, 55. MFC was based in Miami at the time of the events described in the Complaint. *Id.* ¶ 50. The remaining Ad-Hoc Group Defendants have significant business ties to the United States, as set forth in greater detail in the Complaint. *See id.* ¶¶ 19-67.

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[5] Integradora's relevant subsidiaries for purposes of this action are (1) Perforadora (the operating entity); (2) the Singapore Rig Owners (the Rig-owning entities); and (3) Oro Negro Drilling, Pte., Ltd. ("Oro Negro Drilling") (the parent entity of the Singapore Rig Owners and issuer of the Bonds, as defined below).

[6] The proceedings have been consolidated and the two insolvencies administered together in México. Compl. ¶ 198.

3. The Seamex Defendants

The Seamex Defendants are Seadrill and New York-based Fintech Advisory. *Id.* ¶¶ 68-69. Seadrill trades on the New York Stock Exchange and recently emerged from Chapter 11 bankruptcy proceedings in the U.S. Bankruptcy Court for the Southern District of Texas (Victoria Division) on behalf of itself and 85 direct and indirect subsidiaries ("Seadrill Restructuring"). *Id.* ¶¶ 72-75. Seadrill and Fintech Advisory are 50/50 owners of Seamex, a Mexican joint venture and Oro Negro's primary competitor in México. *Id.* ¶ 68.

4. The Singapore Defendants

The Singapore Defendants are (1) the Singapore Rig Owners;[7] and (2) the Singapore Directors, Noel Hunter Cochrane, Roger Bartlett and Roger Hancock. *Id.* ¶¶ 82-87. Cochrane resides in the United States. *Id.* ¶ 76.

B. Oro Negro

1. Corporate Structure

Integradora acquired the five Rigs—*Decus*, *Fortius*, *Impetus*, *Laurus*, and *Primus*—between 2012 and 2015. *Id.* ¶ 99. It owns the five Rigs through the five Singapore Rig Owners, each of which owns one Rig. *Id.* ¶¶ 99-100. Specifically, Integradora owns 100% of the equity of Oro Negro Drilling, which in turn owns 100% of the equity in each Singapore Rig Owner. *Id.* ¶ 100. Even though each Singapore Rig Owner owns a Rig, no Singapore Rig Owner operates or has the capacity to operate a Rig. *Id.* ¶ 101. Without an associated contract, each Rig is worth approximately $150 million. *Id.* ¶ 102. With an associated contract, each Rig can be worth hundreds of millions of dollars. *Id.*

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[7] *See supra* note 2. The Singapore Rig Owners were previously represented in the underlying Chapter 15 Proceeding by the same New York-based attorneys who act for the majority of the Ad-Hoc Group Defendants: Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss").

Perforadora is the Integradora subsidiary responsible for operating the Rigs. *Id.* ¶ 103. It leases the Rigs from the Singapore Rig Owners through the Bareboat Charters and, in turn, leases them to Pemex. *Id.* Perforadora has always had only one customer: Pemex. *Id.* ¶ 104.

2. Financing

Between 2012 and 2015, Oro Negro raised capital though equity contributions and bond issuances to acquire the Rigs, which are held by the five Singapore Rig Owners. *Id.* ¶¶ 98, 107.

(a) The Bonds

In 2014 and 2015, Oro Negro Drilling and Oro Negro Impetus issued two series of bonds with an aggregate face value of USD 900 million. *Id.* ¶ 107. The bond agreement was amended twice in 2015 and 2016, and all bonds were later consolidated into a single bond debt with Oro Negro Drilling as the sole issuer (as defined above, "Bonds").[8] *Id.* ¶¶ 120-23, 147. The Bonds are governed by a bond agreement (as amended and restated after the amendments, "Bond Agreement") between Oro Negro Drilling and Nordic Trustee, a Norwegian financial services firm. *Id.* ¶ 109. The Bond Agreement is governed by Norwegian law. *Id.*

Nordic Trustee is the trustee under the Bond Agreement and acts on behalf of the Bondholders to collect on the Bonds. *Id.* Nordic Trustee can only act for the Bondholders with the approval of at least 50% of the Bondholders, and acts only at their direction. *Id.* ¶ 118. Thus, practically speaking, the Ad-Hoc Group, which purports to own over 50% of the Bonds, has controlled every single action and decision of the Bondholders since at least May 2017.[9] *Id.* Notably, under the Bond Agreement, neither Nordic Trustee nor any Bondholder has any right to

[8] In connection with the amendments to the Bond Agreement, the Bondholders conducted detailed and lengthy audits of Integradora and its subsidiaries' finances and operations. Compl. ¶ 121. They were satisfied with Oro Negro's finances and operations and made minor recommendations, which Oro Negro accepted and implemented. *Id.*

[9] [redacted]

interrupt, disrupt or interfere in Perforadora's contracts, including the Oro Negro Contracts, or to interfere in Perforadora's use of the Rigs. *Id.* ¶ 112.

(b) Security

As security for the Bonds, Integradora pledged its shares in Oro Negro Drilling to Nordic Trustee ("Oro Negro Drilling Share Charge"), and Oro Negro Drilling pledged its shares in the Singapore Rig Owners to Nordic Trustee ("Singapore Rig Owner Share Charge," and, together with the Oro Negro Drilling Share Charge, "Share Charges"). *Id.* ¶¶ 113-14. Integradora also provided a mortgage on the Rigs in favor of Nordic Trustee ("Mortgage[s]").

The Share Charges are governed by Singapore law, while the Mortgages are governed by Panamanian law. *Id.* ¶¶ 114-115.

(c) Events of Default

Events of default include (1) Oro Negro's failure to pay interest or the principal when due under the Bond Agreement; and (2) initiation by Oro Negro of restructuring, insolvency or bankruptcy proceedings. *Id.* ¶ 116. In such circumstances, Nordic Trustee may declare an event of default, exercise the Bondholders' security rights, and demand immediate payment of the entire principal and accrued interest. *Id.*

However, Nordic Trustee's rights to declare a default are circumscribed by local insolvency law. *Id.* ¶ 117. Mexican courts have ruled that Mexican law governs Nordic Trustee's rights under the Bond Agreement to the extent that exercising those rights impacts Integradora and Perforadora. *Id.* As described further in Section VI, Mexican law provides that terminating a contract or taking any actions to worsen a debtor's condition, such as declaring an event of default, due to the commencement of insolvency proceedings is unenforceable as a violation of Mexican public policy because it impairs the debtor's ability to successfully reorganize.

(d) The Trust

The Bond Agreement provided for the establishment of a Mexican trust (in Spanish, *fideicomiso*) that receives the payments by Pemex to Perforadora for leasing the Rigs ("Mexican Trust"). *Id.* ¶ 160. The Mexican Trust's administrator, the entity responsible for managing the trust funds, including paying the beneficiaries, is Deutsche México. *Id.* ¶ 161.

3. Bondholders' Advisors

[redacted] *See infra* Section D.2.A.

4. [redacted]

Additionally, in connection with the amendments to the Bond Agreement and under the auspices of ensuring a smooth and collaborative relationship between Oro Negro and its Bondholders, the Ad-Hoc Group required Oro Negro to appoint Ole Aagaard Jensen, a rig operations consultant, as Chief Operating Officer ("COO"). *Id*. ¶¶ 122-123. [redacted] *Id.* ¶¶ 177-181.

5. The Rigs And Rig Contracts

(a) The Bareboat Charters

The Singapore Rig Owners leased the Rigs to Perforadora, Integradora's operating subsidiary, through the Bareboat Charters. *Id.* ¶ 124-125. The five Bareboat Charters are

governed by U.S. maritime law and disputes arising under them are subject to the jurisdiction of New York courts. *Id.* ¶¶ 124-25.

Perforadora, in turn, contracted the Rigs to provide drilling services to Pemex under the Oro Negro Contracts. *Id.* ¶ 145. The Bareboat Charters are explicitly tied to the Oro Negro Contracts: each Charter is valid from "the commencement of the [Oro Negro Contract]" to the "termination/expiry of the [Oro Negro Contract]" ("Charter Period"), and Perforadora has sole and exclusive possession of the Rigs during that time (i.e., for the duration of the Oro Negro Contracts). *Id.* ¶¶ 126-127.

The Bareboat Charters also set forth how income from Pemex and expenses to maintain and operate the Rigs would be allocated between Perforadora, Integradora and the Singapore Rig Owners. Specifically, Perforadora must pay the Singapore Rig Owners the net funds that Pemex pays to Perforadora under the Oro Negro Contracts, after accounting for operational and administrative expenses ("Charter Hire").[10] *Id.* ¶¶ 128-129.

Under the Bareboat Charters, the Singapore Rig Owners are responsible for certain expenses associated with the Rigs and must reimburse Perforadora for such expenses ("Reimbursement Costs"). *Id.* ¶ 130. One such expense is the cost to maintain the Rigs "in class" (i.e., with a valid inspection from the American Bureau of Shipping ("ABS")), which certifies that the Rigs are in good condition and meet all required safety standards. *Id.* ¶ 132. This certification is necessary for the Rigs to legally (1) provide services to Pemex; (2) maintain their insurance coverage; and (3) remain in Mexican waters. *Id.* ¶¶ 132-133. The ABS conducts a comprehensive inspection every five years to determine if a Rig is "in class" ("Five-Year Class

[10] The Bareboat Charters expressly provided that Charter Hire is not due unless and until Pemex pays Perforadora while the Rigs are in service. If the Rigs are not in service, or Pemex fails to pay, no Charter Hire is owed during that period. *Id.* ¶ 128.

Certification") and narrower annual inspections to assure a Rig should remain "in class" ("Annual Certification[s]"). *Id.* ¶ 133.

Pursuant to the Bareboat Charters, the Singapore Rig Owners must pay for all expenses necessary for the Rigs to remain "in class," including the costs associated with the Five-Year Class Certification and the Annual Certifications. *Id.* ¶ 132-135. Article 7.1 of each Bareboat Charter states that "[a]nnual survey, special survey, major maintenance and major overhaul of the Vessel shall be performed every five years (or any other time as required by the classification society) by Charterer at Owner's expense." *Id.* ¶ 133. In 2017 and 2018, Perforadora incurred $274,925.29 in expenses to obtain Five-Year Class Certifications and Annual Certifications for the five Rigs. *Id.* ¶ 135. These are expenses that the Singapore Rig Owners must reimburse to Perforadora. *Id.*

Prior to the start of the Charter Period, Perforadora has no obligation to pay for the maintenance of the Rigs or any costs associated with them. *Id.* ¶ 136. The Charter Period for the Impetus Bareboat Charter began on May 29, 2016. *Id.* ¶ 137. Prior to the commencement of this Charter Period, Perforadora incurred $7,520,279.88 in expenses for the Impetus, including salaries, maintenance, fuel and personnel training. *Id.* ¶ 138. Oro Negro Impetus must reimburse these sums to Perforadora. *Id*.

(b) The Oro Negro Contracts

From April 2013 to January 2014, Perforadora entered into the Oro Negro Contracts to provide drilling services to Pemex. *Id.* ¶ 140. Under the original terms, Oro Negro's annual revenues from the Oro Negro Contracts were approximately $280 million. *Id.* ¶ 143. Over the life of the Oro Negro Contracts, Pemex would have paid Oro Negro $1.05 billion. *Id.*

Under the terms of the Oro Negro Contracts, Pemex paid Perforadora daily rates, which were deposited into the Mexican Trust and then distributed according to the Trust Agreement

amongst Perforadora and the Singapore Rig Owners. *Id.* ¶¶ 148, 160. The Singapore Rig Owners, in turn, transferred funds to Oro Negro Drilling, their Singaporean parent entity and bond-issuer. *Id.* ¶¶ 226, 253. This is how Oro Negro paid its bond debt, and, until October 2017, it never missed a payment. *Id.* ¶ 253. Pemex may only validly terminate the Oro Negro Contracts if Perforadora breaches them, for *force majeure*, or for "duly justified reasons" (in Spanish, *razones debidamente justificadas*). *Id.* ¶ 144.

Under the Oro Negro Contracts, Pemex pays Perforadora the daily rate depending on the amount of time the Rig is available and ready for Pemex to use (i.e., it excludes time when the Rig is in repair or malfunctioning), regardless of whether Pemex actually uses it. *Id.* ¶ 148. From the inception of the Oro Negro Contracts until Pemex purported to terminate them in October 2017, Pemex paid (or authorized payment but has not yet paid), on average, 99.5% of the daily rate under each Pemex Contract, meaning that the Rigs were available and ready for use, on average, 99.5% of the time. *Id.* ¶ 149. Thus, Perforadora's performance of the Oro Negro Contracts was almost perfect. *Id.*

In 2015 and 2016, Pemex reduced the agreed-upon daily rates it paid Oro Negro for the use of the Rigs ("2015 and 2016 Amendments") and suspended two Rigs. *Id.* ¶ 145. This reduced Oro Negro's revenue by more than 50% and forced Oro Negro to renegotiate its bond debt. *Id.* ¶ 146. Pemex and Oro Negro agreed that the 2015 and 2016 Amendments were temporary and that the Oro Negro Contracts would return to their original terms in 2017. *Id*.

However, as described in more detail in *infra* Section D.1, in 2017, Pemex purported to impose on Oro Negro even more severe amendments that would have made it impossible for Oro Negro to timely repay the Bonds ("2017 Proposed Amendments"). *Id.* ¶ 162. These amendments were harsher than those imposed on any other provider. *Id.* ¶ 155. Oro Negro did

its utmost to convince Pemex not to impose such debilitating terms, but Pemex refused to negotiate more reasonable terms and withheld payment to Oro Negro for past-due invoices, putting tremendous financial pressure on the company. *Id.* ¶ 164.

C. Seamex

From around 2011 to 2015, Pemex entered into contracts for offshore drilling rigs with various other companies, including Seamex, Perforadora's main competitor.[11] *Id.* ¶ 150. With the notable exception of Seamex's contracts, the original terms of all the rig lease agreements with Pemex were similar. *Id.* ¶¶ 150-51.

The Seamex contracts with Pemex have much more generous terms for Seamex and are significantly more expensive for Pemex than Pemex's contracts for similar equipment (such as the Rigs). *Id.* ¶ 152. The Seamex contracts have (1) higher daily rates; (2) significant limitations on the ability of Pemex to terminate; (3) longer terms; and (4) virtually no penalties for deficient operation and maintenance of the rigs. *Id.* Seadrill has even described Seamex's contracts as "absolutely secure" [redacted] *Id.* ¶ 165.

Notably, even though the terms of the Seamex contracts are significantly more expensive for Pemex than the Oro Negro Contracts, Pemex did not impose similarly drastic amendments on Seamex as it imposed on Oro Negro. *Id.* ¶ 155.

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[11] Seamex is co-owned by Seadrill and Fintech Investments. Seamex also has five rigs that it leases to Pemex. *Id.* ¶ 68. Seadrill manages Seamex. [redacted] Seadrill has two U.S. subsidiaries incorporated and with principal places of business in the United States—Seadrill Americas, Inc. and Sevan Drilling Ltd.—through which it conducts significant business in the United States. *Id.* ¶ 74. Seadrill commenced the Seadrill Restructuring in September 2017 in the U.S. District Court for the Southern District of Texas. *Id.* ¶ 75.

Seadrill conducts permanent and substantial business in New York and has strong connections to New York. *Id.* ¶ 74. Specifically, Seadrill trades on the New York Stock Exchange. *Id.* In addition, two of the current members of Seadrill's Board of Directors are based in New York. *Id.* ¶ 74. [redacted] *Id.* ¶ 241.

D. March to September 2017

1. 2017 Proposed Amendments

In March 2017, Pemex broke its promise, demanding that (1) the two contracts for the *Primus* and *Laurus* remain suspended; and (2) Perforadora accept permanent daily rate reductions of approximately 27% on the other three contracts. *Id.* ¶ 162. As explained in Section B.5.b, these terms threatened Oro Negro's solvency by cutting its revenues drastically. Pemex repeatedly threatened to terminate all the Oro Negro Contracts (a tactic it had used to secure the 2015 and 2016 Amendments) and refused to approve and pay Perforadora's outstanding invoices even though the Rigs remained in operation and Pemex pumped oil using the Rigs.[12] *Id.* ¶ 164.

Oro Negro turned to its Bondholders for support during this time, and discussed Pemex's position and tactics with ARCM so that ARCM would support Oro Negro and prevent Pemex from imposing its draconian terms. *Id.* ¶ 165. [redacted] *Id.*

2. The Defendants' Interference

(a) The Ad-Hoc Group and Its Advisors

The Ad-Hoc Group, which owned approximately 60% of the Bonds, formed in 2017 and engaged the law firm Paul Weiss as legal counsel. *Id.* ¶ 166. [redacted]

[12] From April to September 2017, while Pemex was pressuring Perforadora to accept the 2017 Proposed Pemex Amendments, Perforadora accrued close to $90 million in unpaid daily rates.

[redacted] *Id.* ¶ 170. Leand, AMA's Managing Director and CEO, [redacted] having held positions on the Seadrill and SFIL Boards of Directors. *Id.* ¶¶ 60, 74.

[redacted] *Id.* ¶ 173. [redacted]

[redacted][13]

(i) [redacted]

Id. ¶ 179.

(b) Coordination with Pemex

[redacted]

[redacted]

Even though the Ad-Hoc Group knew that the 2017 Proposed Pemex Amendments were not economically feasible for Oro Negro, they sent multiple letters to Oro Negro demanding that Perforadora accept them. *Id.* ¶ 189. On August 11, 2017, facing a severe liquidity crisis caused by Pemex's refusal to pay its daily rates and fearing that Pemex would unlawfully purport to cancel the Oro Negro Contracts, Perforadora informed Pemex that it would accept the 2017 Proposed Pemex Amendments. *Id.* ¶ 192.

Inexplicably, despite Perforadora's acceptance, Pemex failed to execute the 2017 Proposed Pemex Amendments, and Perforadora feared that Pemex was preparing to illegally terminate the Oro Negro Contracts. *Id.* ¶ 193. However, because Pemex failed to execute the 2017 Proposed Pemex Amendments, the temporary terms of the 2015 and 2016 Amendments expired in late 2017 and the Oro Negro Contracts returned to their original terms (i.e., to their original daily rates and duration). *Id.* ¶ 194.

E. Events After September 11, 2017

1. The *Concurso* Filing

With no support from its Bondholders and no response from Pemex, in order to protect Oro Negro's shareholders, creditors and employees, on September 11, 2017, Perforadora filed for restructuring in México.[14] *Id.* ¶ 195. In September and October 2017, Oro Negro sought injunctive relief, requesting that the *Concurso* Court issue injunctions to maintain its *status quo*, including expressly prohibiting (1) Pemex from terminating the Oro Negro Contracts or ceasing

[14] On September 29, 2017, Integradora filed its parallel *concurso mercantil* proceeding before the *Concurso* Court. Upon commencing its *concurso mercantil* proceeding, Integradora requested that the *Concurso* Court consolidate the two restructuring proceedings.

to pay Perforadora the daily rates under the Oro Negro Contracts; (2) the Bondholders from foreclosing on the Rigs; (3) Deutsche México from disbursing any funds from the Mexican Trust other than to Perforadora to operate its business; and (4) Nordic Trustee from acting in furtherance of its declaration of default, including by (i) exercising the Oro Negro Drilling Share Charge; and (ii) attempting to collect on the limited guarantee under which Integradora guarantees up to $175 million of the Bonds ("Guarantee"). *Id.* ¶¶ 193-199.

2. Injunctions

On October 5, 2017, the *Concurso* Court issued an order granting Perforadora's request to initiate a *concurso* proceeding ("October 5 Order"). *Id.* ¶ 200. In the October 5 Order, the *Concurso* Court issued numerous injunctions, including enjoining (1) Pemex from terminating the Oro Negro Contracts and ceasing to pay Perforadora under the Oro Negro Contracts; (2) Nordic Trustee (on behalf of the Bondholders) from taking any action to terminate the Bareboat Charters; and (3) Deutsche México from disbursing any funds in the Mexican Trust. *Id.*

On October 8, 2017, Perforadora informed the *Concurso* Court that Pemex and the Singapore Rig Owners (acting under the unlawful control of the Ad-Hoc Group) had attempted to terminate the Oro Negro Contracts and the Bareboat Charters (as explained in *infra* Section E.3.B). *Id.* ¶ 201. In response, on October 11, 2017, the *Concurso* Court issued an order confirming that (1) Pemex was enjoined from terminating the Oro Negro Contracts, including taking any steps to further its purported terminations (e.g., ceasing to pay Perforadora); and (2) Nordic Trustee (acting for the Bondholders) was enjoined from taking any action to terminate the Bareboat Charters, including acting in furtherance of the Singapore Rig Owners' purported terminations of the Bareboat Charters ("October 11 Order"). *Id.* ¶ 202.

Lest there be any doubt, on December 29, 2017, the *Concurso* Court again confirmed these orders. The Court further clarified that the October 5 and 11 Orders applied retroactively

and, as such, that (1) Pemex's purported terminations of the Oro Negro Contracts "were not valid" (i.e., they were null, void and unenforceable); and (2) the Oro Negro Contracts were valid and enforceable.[15] *Id.* ¶ 203.

Further, on October 31, 2017, the *Concurso* Court issued numerous injunctions, including enjoining Nordic Trustee from (1) exercising or taking any actions in furtherance of the Oro Negro Drilling Share Charge; and (2) asserting any claims against Integradora under the Guarantee. Both injunctions are in effect. *Id.* ¶ 204.

The Ad-Hoc Group has blatantly violated the *Concurso* Court's injunctions. As set forth in *infra* Section E.3.a, they caused Nordic Trustee to exercise the Oro Negro Drilling Share Charge and have been acting in furtherance of the Oro Negro Drilling Share Charge since October 2017, primarily by acting as the purported owners of Oro Negro Drilling and, through it, of the Singapore Rig Owners. *Id.* ¶ 205.

3. Violations of the *Concurso* Court's Injunctions and Mexican Law

Instead of supporting Oro Negro's reorganization as normal creditors would, the Ad-Hoc Group chose to violate the injunctions. [redacted] *Id.* ¶ 211.

(a) The Ad-Hoc Group Encourages Pemex to Terminate the Oro Negro Contracts

Even though Oro Negro had already sought *concurso* protection, including seeking injunctive relief to prevent the termination of the Oro Negro Contracts, on October 3, 2017,

[15] In late January 2018, Pemex filed an *amparo* (a remedy for the protection of constitutional rights available in Mexican courts) against the December 29 Order. On February 21, 2018, the *amparo* judge stayed the December 29 Order as to Pemex pending a final decision on the *amparo* on the ground that, although the injunctions in the October 5 and October 11 Orders are lawful and appropriate under Mexican insolvency law, maintaining them as to Pemex supposedly threatens Pemex's financial survival. The *amparo* is still pending.

Pemex delivered letters to Perforadora purporting to terminate the Oro Negro Contracts ("Termination Letters"). Pemex asserted that it was terminating four of the Contracts because other vendors had accepted lower daily rates, and that it was terminating the fifth Contract (for *Impetus*) because Perforadora had filed for *concurso*. *Id.* ¶¶ 214-221.

Pemex's justification for the terminations was illegal, making the terminations null and void. In February 2019, the Mexican federal court ruled that the terminations of the Oro Negro Contracts were unlawful, invalid, and unenforceable.[16] *Id.* ¶ 220. In addition, and despite the *Concurso* Court's reaffirmations that Pemex could not terminate the Oro Negro Contracts, Pemex returned the Rigs to Perforadora and stopped paying the daily rates, including past-due daily rates. *Id.* ¶ 224. Notably, the Ad-Hoc Group, [redacted] never offered to help Oro Negro collect any payment from Pemex, even though Pemex payments were the only source of repayment for the Bonds. *Id.* ¶ 227.

[redacted]

[16] Perforadora also sued Pemex within the *concurso* regarding the *Impetus* termination. Terminating a contract in México because a counterparty files for *concurso* is unlawful and unenforceable because it violates a rule in the Mexican Bankruptcy Code expressly prohibiting termination of a contract (or taking any actions to worsen the debtor's condition) due to a *concurso* filing. *Id.* ¶¶ 221-222. Accordingly, on November 7, 2017, Perforadora sued Pemex in the *concurso* proceeding (in an ancillary proceeding within the *concurso*) seeking a declaration that Pemex breached the Impetus Contract by unlawfully terminating it and demanding performance and damages. *Id.* ¶ 222. The case remained pending as of the date of this Complaint. *Id.*

[redacted]

(b) Termination of the Bareboat Charters

In parallel to their interference with the Oro Negro Contracts, the Ad-Hoc Group improperly asserted control over the Singapore Rig Owners. *Id.* ¶ 235. [redacted]

[redacted]

17 [redacted]

[redacted]

[redacted] on September 25, 2017, Nordic Trustee, instructed by the Bondholders, declared Oro Negro Drilling in default and formally appointed Bartlett and Hancock as directors, [redacted] *Id.* ¶ 236. On October 5, 2017, just two days after Perforadora received Pemex's Termination Letters, the Singapore Directors caused the Singapore Rig Owners, acting under the unlawful control of the Ad-Hoc Group, to purport to terminate the Bareboat Charters and demand that Perforadora return the Rigs to them on the sole ground that Pemex had validly terminated the Oro Negro Contracts. *Id.* ¶ 237.

(c) Seamex's Facilitation of the Ad-Hoc Group's Interference

The Ad-Hoc Group knew it would succeed, in part because it was well supported. *Id.* ¶ 238. [redacted]

[redacted]

[redacted]

Pemex feel comfortable terminating the Oro Negro Contracts.

(d) Interference in Oro Negro's Reorganization

The *Concurso* Court's injunctions prohibiting the terminations were problematic for Defendants' scheme. *Id.* ¶ 242. [redacted]

However, the Ad-Hoc Group did not support Oro Negro's reorganization. [redacted]

(e) Interference in January 2018

[redacted]

18 [redacted]

[redacted] Pemex ultimately cancelled the meeting with Oro Negro, [redacted]

F. Global Litigation

Unsuccessful in México, the Ad-Hoc Group sought other forums to facilitate their takeover of Oro Negro's Rigs. *Id.* ¶ 279.

1. The Singapore Litigation

First, in January 2018, Oro Negro Drilling and the Singapore Rig Owners, acting under the unlawful control of the Ad-Hoc Group, filed a complaint in Singapore against Integradora and two of its managers, seeking a declaration that they could not act on behalf of Oro Negro Drilling and the Singapore Owners in the *concurso*, as well as damages resulting from these entities' filing for *concurso* on September 29, 2017 ("Singapore Proceeding"). *Id.* ¶ 280. Moreover, Oro Negro Drilling and the Singapore Rig Owners sought, *ex parte*, to enjoin Integradora and its managers from acting on behalf of Oro Negro Drilling and the Singapore Rig Owners in the *concurso*, which a Singapore court granted on January 30, 2018. *Id.*

Notably, in the course of the proceeding, Oro Negro Drilling and the Singapore Rig Owners argued that Singapore was the proper forum for the dispute, rather than México. Morillo Decl. ¶ 4, Ex. 1. In September of 2019, they ultimately prevailed on this argument. *Id.*

2. The New York Litigation

On March 15, 2018, the Singapore Rig Owners, acting under the Ad-Hoc Group's unlawful control, sued Perforadora in the United States District Court for the Southern District of New York, seeking, *inter alia*, an order compelling Perforadora to deliver the Rigs to them.[19] Compl. ¶ 285. In that suit, the Singapore Rig Owners took the position that New York (not Singapore or México) was the appropriate forum to grant the relief they sought—taking over the Rigs ("New York Litigation"). The Chapter 15 Proceeding stayed the New York Litigation. *Id.* ¶ 287.

On October 12, 2018, abruptly and without advance notice to this Court or the Foreign Representative, the Singapore Rig Owners voluntarily dismissed the New York Litigation. *Id.* ¶ 288. [redacted] *Id.*

3. The Norway Lawsuit

In November 2018, Nordic Trustee initiated a proceeding in Norway to obtain a declaration that Oro Negro Drilling had defaulted on the Bonds ("Norwegian Declaratory Action"). *Id.* ¶ 289. Oro Negro Drilling, acting under the unlawful control of the Ad-Hoc Group, did not defend itself and simply accepted Nordic Trustee's allegations. *Id.*

On January 10, 2019, the Norwegian court ruled that Oro Negro Drilling had defaulted on the Bonds. *Id.* ¶ 290. Nordic never provided notice to Integradora or Perforadora of the

[19] At the time, and still to this date, Integradora and the Bondholders have been litigating in México the issue of control over the Singapore Rig Owners.

Norwegian Declaratory Action. *Id.* ¶ 291. The existence of the suit was disclosed to the Foreign Representative only in late January 2019, after the case was over. *Id.*

G. The Chapter 15 Proceeding

The Foreign Representative initiated a Chapter 15 Proceeding before this Court on April 20, 2018 to (1) obtain recognition from this Court of Integradora's and Perforadora's *concurso*; (2) stay the New York Litigation; (3) enforce the *Concurso* Court's orders; and (4) obtain information from several parties (the Ad-Hoc Group, AMA, Pemex, Seamex and Deutsche México) regarding their potential misconduct. *Id.* ¶ 292.

This Court, as stated in the Comity Order, did the following: (1) recognized the *concurso* as the foreign main proceeding; (2) stayed the New York Litigation; (3) granted comity to the October 5, October 11 and December 29 Orders; and (4) authorized the Foreign Representative to obtain discovery from, initially, the Ad-Hoc Group, AMA and Deutsche México and, later, from Seadrill and Fintech Advisory. *Id.* ¶ 293.

Across the latter half of 2018, AMA, Alterna and Contrarian, the U.S.-based Ad-Hoc Group Defendants, [redacted]—as a means to delay and obfuscate Plaintiffs' attempts to uncover Defendants' misdeeds in trying to seize the Rigs. *Id.* ¶¶ 294, 301.

H. Financial Strangulation and the Criminal Proceedings

Simultaneously with its global litigation efforts, the Ad-Hoc Group redoubled its efforts to starve Oro Negro into submission, [redacted] and arguing in the *Concurso* Court that Perforadora was not entitled to any of the funds in the Trust. *Id.* ¶¶ 257-271.

The Ad-Hoc Group also attempted to financially strangle Oro Negro by ignoring Oro Negro's requests that it assist in convincing Pemex to pay its outstanding receivable of over $100 million. *Id.* ¶ 227. However, the *Concurso* Court intervened, ordering (1) Pemex in no uncertain terms (even threatening to jail its CEO) to make the outstanding payments; and (2) the Trust to make certain disbursements to Oro Negro that would have enabled it to maintain the Rigs pending reorganization. *Id.* ¶ 269.

1. Mexican Criminal Counsel

In response, through the Singapore Rig Owners, the Ad-Hoc Group Defendants, [redacted],

[redacted]

Relying on fabricated evidence, [redacted] file four baseless criminal proceedings on behalf of the Singapore Rig Owners against Oro Negro, its directors, officers and employees, including Gil. *Id.* ¶ 321. Tellingly, the Ad-Hoc Group has not made any similar accusations in any other proceedings, including in the *concurso* or in the Chapter 15 Proceeding.

2. First Criminal Complaint

On June 18, 2018, [redacted] filed the first criminal complaint before the *Procuraduría General de la República* ("PGR"), México's federal prosecutors' office, against Integradora, Perforadora, Gil, Integradora's CEO, and three of their employees, falsely accusing them of mismanaging funds in the Mexican Trust. *Id.* ¶ 324. The complaint falsely alleges that, in 2017, Perforadora obtained from the Mexican Trust more funds than it required to maintain and operate the Rigs. *Id.* ¶ 325.

[redacted]

Nevertheless, the Ad-Hoc Group, through the Singapore Rig Owners, requested that the local prosecutor seek a seizure of the Mexican Trust and all of the bank accounts belonging to the Mexican Trust and Perforadora. *Id.* ¶ 334. A Mexican federal judge concluded that the allegations of mismanagement of the Mexican Trust were completely baseless and that the PGR had no evidence demonstrating that the Mexican Trust was in any way related to any criminal conduct. *Id.*

However, the Ad-Hoc Group was able to use that proceeding to obtain information regarding Perforadora from the *Servicio de Administración Tributaria* ("SAT"), México's tax agency, that the Singapore Rig Owners subsequently used in another criminal proceeding. *Id.* ¶ 335. The SAT sent to the PGR a disc with hundreds of tax filings filed by Perforadora and third parties reflecting services supposedly provided to them by Perforadora, as well as charts summarizing these filings. *Id.* ¶ 337. [redacted]

The information in that spreadsheet is demonstrably false (as explained below) [redacted] However, when the media reported on the criminal case, [redacted] *Id.* ¶ 342.

3. Second Criminal Complaint

On June 18, 2018, the Singapore Rig Owners—[redacted]—filed a second frivolous criminal complaint before the *Procuraduría General de Justicia de la Ciudad de México* ("México City DA"), México City's local prosecutors'

[20] [redacted] *See* Ch. 15, ECF 174.

office, against Alonso Del Val, the then-Foreign Representative, for signing on behalf of Integradora, on September 20, 2017, shareholder resolutions of Oro Negro Drilling and the Singapore Rig Owners authorizing Jesus Guerra ("Attorney Guerra"), Integradora's and its subsidiaries' Mexican attorney, to file *concurso* petitions on their behalf. *Id.* ¶ 343. The Singapore Rig Owners argue in their complaint that Del Val purportedly misled the *Concurso* Court by allowing Attorney Guerra to act on behalf of Oro Negro Drilling and the Singapore Rig Owners because Oro Negro Drilling and the Singapore Rig Owners should have been controlled by the Bondholders. *Id.* ¶ 344.

The case is clearly frivolous and intended only to harass Oro Negro. *First*, the authorization pre-dates the filing. *Id.* ¶ 346. *Second*, this is an issue still being litigated in the *Concurso* Court. *Id.* ¶ 347.

4. The Third Criminal Proceeding

(a) Fabrication of Evidence

In early September 2018, based on the allegations of mismanagement of the Mexican Trust (which are described above) and the SAT's false evidence, the Singapore Rig Owners, [redacted], requested that the PGR obtain a court order from a Mexican federal judge seizing the Mexican Trust and all of Perforadora's bank accounts. *Id.* ¶ 349. A day after the request, a Mexican federal judge denied the seizure as baseless, concluding that the Singapore Rig Owners had failed to provide ***any*** evidence that the Mexican Trust or any of the bank accounts of the Mexican Trust or Perforadora were in any way related to, or held proceeds of, any criminal conduct. *Id.* ¶ 350.

[redacted] though the Singapore Rig Owners, filed a criminal complaint before the México City DA against Perforadora accusing it of issuing invoices from 2014 to 2017 and

totaling approximately $500,000, to 16 companies that supposedly facilitate tax evasion. *Id.* ¶¶ 351-352. The sole "evidence" in support of the complaint [redacted]. *Id.* ¶ 357.

The allegations make no sense. Perforadora has only ever provided services to Pemex, and would never have invoiced any other entity, much less ones, like the sham companies, that have nothing to do with Rig operations. *Id.* ¶¶ 361-362. Further, Perforadora conducted a comprehensive internal investigation and determined that these allegations are false. *Id.* ¶¶ 353-364. Under Mexican law, every company, including Perforadora, must upload their invoices to an electronic database that the SAT maintains. *Id.* ¶ 363. As the SAT has now confirmed in writing to Perforadora, there is no record in the SAT's database of Perforadora ever issuing an invoice to these sham companies. *Id.* The sham companies also do not appear on other files from the same "disc" purporting to list all the entities with which Oro Negro had done business. *Id.* ¶ 365.

(b) Seizure Order

Nonetheless, the Ad-Hoc Group was ultimately successful in its scheme, obtaining within one week an order seizing the Mexican Trust and all of Oro Negro's accounts ("Seizure Order"). *Id.* ¶ 368. [redacted]

Neither [redacted] the prosecutors, nor the court provided any notice whatsoever to Perforadora about the criminal investigation, much less the Seizure Order. *Id.* ¶ 371.

Perforadora only learned of the criminal investigation and the Seizure Order because the Mexican media published articles about them on October 1, 2018. *Id.*

(c) The Rigs Take-Over Order

Emboldened by the success of the Seizure Order, on October 18, 2018 (Thursday), [redacted] acting on behalf of the Singapore Rig Owners, sought and, one day later obtained, a second unlawful order. *Id.* ¶ 372. This time, without presenting any evidence and again within days of requesting it, the Singapore Rig Owners obtained an order allowing them to take possession of the Rigs ("Rigs Take-Over Order"), in effect authorizing the Bondholders to dispossess Integradora of approximately $750 million in value, based on an unproduced spreadsheet supposedly showing invoices that Perforadora allegedly sent to 16 "sham" companies totaling a mere $500,000. *Id.* ¶¶ 372-377. To ensure their success, the judge also issued orders to government forces to provide all possible assistance to the Singapore Rig Owners in taking over the Rigs. *Id.* ¶ 378.

From October 19 to October 21, 2018 (Friday to Sunday), the Ad-Hoc Group and its agents, led by Aagaard, placed their crews in helicopters and deployed the helicopters to try to forcibly take over the Rigs. *Id.* ¶¶ 379-384. On October 20 and 21, the helicopters attempted to land by force on the Rigs. *Id.* ¶ 380. Three men, [redacted] and an armed private security guard, were able to jump from one of the helicopters onto one of the Rigs—the associate and security guard refused to leave for days. *Id.* ¶ 381.

The Ad-Hoc Group finally abandoned the attempt only after (1) the issuance of the Temporary Restraining Order from this Court; (2) an order from the *Concurso* Court to the México City Judge to retract the Rigs Take-Over Order; and (3) a stay of the order from an *amparo* court. *Id.* ¶¶ 387, 389-390. Though ultimately unsuccessful, the reckless attempt put the crews and Rigs at risk of physical harm. *See id.* ¶¶ 380-384. Moreover, while the Bondholders'

agents were on board, GGB's partners falsely asserted, via media appearances, that Oro Negro had kidnapped them. *Id.* ¶ 383.

5. The Fourth Criminal Proceeding

On October 21, 2018, while attempting to take over the Rigs, the Singapore Rig Owners, acting under the Ad-Hoc Group's unlawful control, filed a fourth criminal complaint against Perforadora and its employees before the PGR's office in Ciudad del Carmen, México. *Id.* ¶ 394. The complaint alleges that Perforadora and its employees were in contempt of the Rigs Take-Over Order because they did not allow the Singapore Rig Owners to take over the Rigs. *Id.* ¶ 395. In January 2019, the PGR filed charges, but a federal judge dismissed them on jurisdictional grounds. *Id.* ¶¶ 395-396.

6. Gonzalo Gil

The Ad-Hoc Group and Singapore Defendants have instigated criminal investigations, including the federal criminal case, against not only Oro Negro, but against Mr. Gil personally. *Id.* ¶ 324. Since the Complaint want filed, the Ad-Hoc Group and the Singapore Defendants, [redacted] have secured arrest warrants for Mr. Gil and others that have resulted in a request by local México City Prosecutors for an INTERPOL red notice against Mr. Gil.[21] These investigations, premised on false evidence and without any foundation, have forced Mr. Gil to remain in exile in the United States, unable to return to México for business or to see his family.[22] They have destroyed his business and his professional reputation, inhibited his ability to do business México and abroad, and forced him to live in fear.

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[21] *See* Complaint, *Perez-Correa v. Asia Research and Capital Management*, Adv. No. 19-01360, *In re Perforadora Oro Negro, S. de R.L. de C.V.*, No. 18-11094, ECF 1, ¶ 137.

[22] *Id.* ¶ 30.

ARGUMENT

I. THIS ADVERSARY PROCEEDING BELONGS IN THE UNITED STATES

"*[F]orum non conveniens* is a discretionary device permitting a court in rare instances to dismiss a claim even if the court is a permissible venue with proper jurisdiction over the claim." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 100 (2d Cir. 2000) (quotations omitted). There is a three-step analysis to evaluate *forum non conveniens* challenges: (1) "a court determines the degree of deference properly accorded the plaintiff's choice of forum"; (2) a court "considers whether the alternative forum proposed by the defendants is adequate to adjudicate the parties' dispute"; and (3) "a court balances the private and public interests implicated in the choice of forum." *Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 153 (2d Cir. 2005) (citing *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 73-74 (2d Cir. 2001) (*en banc*)). "The movant bears the burden of showing that the plaintiff's chosen forum is not the appropriate forum." *In re: Lyondell Chem. Co.*, 543 B.R. 428, 457 (Bankr. S.D.N.Y. 2016); *see also Wiwa*, 226 F.3d at 100 ("The defendant has the burden to establish that an adequate alternative forum exists and then to show that the pertinent factors tilt strongly in favor of trial in the foreign forum." (quotations and alterations omitted)). And "unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed." *Lyondell*, 543 B.R. at 457 (quoting *Gulf Oil Corp. v. Gilbert,* 330 U.S. 501, 508 (1947)).

The "court must accept the facts alleged in the complaint as true" when evaluating "a motion to dismiss for *forum non conveniens* … without a factual hearing." *RIGroup LLC v. Trefonisco Mgmt. Ltd.*, 949 F. Supp. 2d 546, 549 (S.D.N.Y. 2013), *aff'd*, 559 F. App'x 58 (2d Cir. 2014). Here, the facts as alleged establish that Defendants cannot meet their burden for dismissal on *forum non conveniens* grounds.

A. Plaintiffs' Choice Of Forum Is Entitled To Substantial Deference

"Any review of a *forum non conveniens* motion starts with 'a strong presumption in favor of the plaintiff's choice of forum.'" *Norex*, 416 F.3d at 154 (citing *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255 (1981)). While this presumption is always strong, "the greater the plaintiff's or the lawsuit's bona fide connection to the United States and to the forum of choice and the more it appears that considerations of convenience favor the conduct of the lawsuit in the United States, the more difficult it will be for the defendant to gain dismissal for *forum non conveniens*." *Iragorri*, 274 F.3d at 72. Here, both Plaintiffs and lawsuit possess strong connections to the forum of choice, and convenience compels retaining the lawsuit in this Court, thus warranting particularly strong deference here.

First, Gil, the named individual Plaintiff, resides in the United States. Compl. ¶¶ 16-17. "[C]ourts should offer greater deference to the selection of a U.S. forum by U.S. resident plaintiffs." *Wiwa*, 226 F.3d at 102. The Ad-Hoc Defendants note (Br. 28 n.27) that Gil resides in Florida, not New York, but "[t]he benefit for a U.S. resident plaintiff of suing in a U.S. forum is not limited to suits in the very district where the plaintiff resides, especially considering that the defendant may not be amenable to suit in the plaintiff's district of residence." *Id.* at 103; *see also Accordia Ne., Inc. v. Thesseus Int'l Asset Fund, N.V.*, 205 F. Supp. 2d 176, 179 (S.D.N.Y. 2002) ("It is well settled that the plaintiff's choice of forum should rarely be disturbed. This remains true even where, as here, a United States plaintiff sues a foreign defendant in a U.S. court that is outside the plaintiff's home district.") (citation and quotations omitted). Moreover, while other Plaintiffs are not U.S. residents, even a single U.S. resident plaintiff suffices for application of strong deference to the choice of a U.S. forum. *See, e.g.*, *Simon v. Republic of Hungary*, 911 F.3d 1172, 1183 (D.C. Cir. 2018) ("[T]he addition of foreign plaintiffs does not render for naught the weighty interest of Americans seeking justice in their own courts.");

Carijano v. Occidental Petroleum Corp., 643 F.3d 1216, 1228 (9th Cir. 2011) ("[T]he district court explained that because Amazon Watch was but one domestic plaintiff alongside 25 foreign plaintiffs, it was entitled to 'only some deference.' The district court cited no legal authority for the application of this vague intermediate standard of deference. Indeed, the district court's application of that standard is directly contrary to the *Piper* . . . ."). Indeed, it would be fundamentally unjust to U.S. citizens (and inconsistent with the judiciary's general obligation to exercise jurisdiction where available) for courts *with jurisdiction* to give them no forum for their claims simply because the defendant also harmed foreign citizens who are also bringing claims against the defendants. *See Simon*, 911 F.3d at 1183.

Second, several Defendants are U.S. residents or have strong U.S. connections; more defendants are located in the United States than in any other single jurisdiction, with only three in México. *See* Compl. ¶¶ 27, 43, 88. "In weighing the … factors, the court starts with a presumption in favor of the plaintiff's choice of forum, especially if the defendant resides in the chosen forum …." *Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 46 (2d Cir. 1996); *see also Iragorri*, 274 F.3d at 72 ("One of the factors that necessarily affects a plaintiff's choice of forum is the need to sue in a place where the defendant is amenable to suit."). Here, Defendants Alterna, AMA, Fintech Advisory, Leand, Bodden, and Cochrane (six of the 23 Defendants) are U.S. residents, and MFC was U.S.-based at the time the relevant conduct occurred. *See* Compl. ¶ 50. Many other Defendants do substantial business in the United States or have strong connections to the United States: ARCM manages funds that raise capital from and invest permanently and significantly in New York (*id*. ¶¶ 32-34); Ercil, ARCM's principal, conducts permanent and substantial business in New York (*id.* ¶ 36); CQS has a subsidiary in New York, through which it conducts permanent and substantial business (*id.* ¶ 38); MFC manages

investments funded by New York-based firms and its managers are based in the United States, and until May 2018, its principal place of business was in the United States (*id.* ¶¶ 50, 52); and SFIL and Seadrill trade on the New York Stock Exchange, and have or had multiple board members in New York (*id.* ¶¶ 62, 74). In addition, Defendants ARCM, CQS, GHL and SFIL have relied on their U.S. connections to attempt to seek relief in the NAFTA arbitration between Oro Negro's U.S. investors and México. *Id*. ¶¶ 32-34.

As with foreign Plaintiffs, the fact that there are also foreign Defendants is immaterial to the presumption. As the Second Circuit explained in a case with a mix of U.S. and foreign defendants, Plaintiffs' "decision to litigate in New York, where all defendants were amenable to suit (and where some reside or are incorporated) is properly viewed as a strong indicator that convenience, and not tactical harassment of an adversary, informed its decision to sue outside its home forum." *Norex*, 416 F.3d at 155. That is especially true here, given that Defendants have avoided jurisdiction in México, which they now argue is the only proper forum; for instance, in the Mexican criminal proceedings, the Ad-Hoc Defendants have acted only through the Singapore Rig Owners to avoid entering formal appearances that could subject the Ad-Hoc Defendants to suit in México. Compl. ¶¶ 321, 324, 335, 343, 349, 352, 394. Moreover, the U.S.-based Defendants have no reasonable argument that this is an inconvenient forum, and as for the foreign Defendants, there is no reasonable way to examine the presumption on a defendant-per-defendant basis. The *forum non conveniens* doctrine concerns convenience of the parties, and there could be no convenience from splitting an action into several separate actions based on the residencies of all of the separate Defendants. The presence of some foreign Defendants in this action therefore does not mitigate the connection to this forum premised, in part, on the U.S.-based Defendants' extensive connections.

Third, the Bareboat Charters at the center of Counts Thirteen through Twenty (and relevant to the other claims) in this action contain a forum selection clause stipulating that venue properly lies in this Court. Compl. ¶ 93 ("The Court has personal jurisdiction over the Singapore Rig Owners pursuant to Section 19.1 of each of the Bareboat Charters, by which the Singapore Rig Owners expressly and irrevocably agreed to submit to the jurisdiction of this Court."). Count 17 expressly concerns a breach of the Bareboat Charters against the Singapore Rig Owners for failure to pay reimbursement costs. Compl. ¶¶ 547-50. And, "[u]nder the doctrine of *forum non conveniens*, a valid forum-selection clause . . . must be given 'controlling weight in all but the most exceptional cases.'" *Midamines SPRL Ltd. v. KBC Bank NV*, No. 12 CIV. 8089 RJS, 2014 WL 1116875, at *3 (S.D.N.Y. Mar. 18, 2014), *aff'd,* 601 F. App'x 43 (2d Cir. 2015) (citing *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 571 U.S. 49, 60 (2013)); *see also Bank of Am. Corp. v. Lemgruber*, 385 F. Supp. 2d 200, 235 (S.D.N.Y. 2005) ("[A] plaintiff's forum choice that is consistent with a mandatory forum selection clause in a contract signed by the parties and encompassing the causes of action brought by the plaintiff is entitled to nearly conclusive deference." (citations and quotations omitted)).

Defendants make no argument for why this action presents an exceptional case that could overcome the forum selection clause. Nor could they, as the Singapore Rig Owners themselves previously sought relief in the Southern District of New York pursuant to those very contracts. *See Oro Negro Decus Pte. Ltd., et al. v. Perforadora Oro Negro, S. de R.L. de C.V.*, Case 1:18-cv-02301-JPO. In their complaint, the Singapore Rig Owners alleged: "Venue properly lies in this Court in accordance with the terms of the Bareboat Charters." *Oro Negro Decus Pte. Ltd., et al. v. Perforadora Oro Negro, S. de R.L. de C.V.*, Case 1:18-cv-02301-JPO, Dkt. No. 1, at ¶ 18. Moreover, even though only the Singapore Rig Owners were also parties to the Bareboat

Charters, the forum selection clause weighs strongly against *forum non conveniens* dismissal with regards to the remaining Defendants "because granting the motion would require the plaintiff to pursue the case in two fora." *Concesionaria DHM, S.A. v. Int'l Finance Corp.*, 307 F. Supp. 2d 553, 563 (S.D.N.Y. 2004) (denying motion to dismiss for *forum non conveniens*). And the Singapore Rig Owners brought suit at the instruction of the Ad-Hoc Defendants. Compl. ¶¶ 285-288.

Fourth, Defendants' prior efforts to seek relief related to *this* dispute in *this* forum preclude later *forum non conveniens* challenges. *See Corporacion Mexicana De Mantenimiento Integral, S. De R.L. De C.V. v. Pemex-Exploracion Y Produccion*, 832 F.3d 92, 104 (2d Cir. 2016) ("[Pemex-Exploración Y Producción] cannot now reject this forum as extraordinarily inconvenient when it affirmatively sought relief from this Court and from the Southern District of New York."); *CF 135 Flat LLC v. Triadou SPY S.A.*, No. 15-CV-5345 (AJN), 2016 WL 5945933, at *3 (S.D.N.Y. June 21, 2016) (denying motion to dismiss for *forum non conveniens* where defendant "first initiated litigation in New York State Supreme Court").

Fifth, Plaintiffs seek relief for violations of U.S. law and this Court's prior orders, both of which establish a strong connection with this forum. Oro Negro's Chapter 15 proceeding in this Court grounds this adversary proceeding. And Count 18 seeks relief for violations of 11 U.S.C. § 1520(a)(1), which stays all actions against property of a debtor located in the United States, and the orders of this Court, which precluded Defendants from seizing the Rigs. Compl. ¶¶ 551-65. Plaintiffs thus have "offered a quite valid reason for litigating in federal court: this country's interest in having United States courts enforce United States . . . laws." *DiRienzo v. Philip Servs.*

Corp., 294 F.3d 21, 28 (2d Cir. 2002) (explaining "that this interest . . . demonstrates a 'bona fide' connection to the United States, that is, a valid reason").[23]

Finally, as discussed *infra* Section IV, the underlying conspiracy to tortiously interfere with Oro Negro's contracts and business relationships and seize the Rigs [redacted] And the greater "the lawsuit's bona fide connection to the United States", the greater the deference this Court must grant Plaintiffs' choice of forum. *Iragorri*, 274 F.3d at 72.

But even if the *Iragorri* analysis, which grants greater deference to Plaintiffs' chosen forum the greater the plaintiff's and action's connections to that forum, favored reduced deference (it does not), the Ad-Hoc Defendants cannot support their assertion (Br. 31) that Plaintiffs' choice of forum "warrants no deference." The Second Circuit "ha[s] cautioned that 'this reduced weight is not an invitation to accord a foreign plaintiff's selection of an American forum *no* deference since dismissal for *forum non conveniens* is the exception rather than the rule.'" *Murray v. British Broad. Corp.*, 81 F.3d 287, 290 (2d Cir. 1996) (emphasis in original) (citing *R. Maganlal & Co. v. M.G. Chem. Co.*, No. 05 CIV. 9478 (GEL), 942 F.2d 164, 168 (2d Cir. 1991)). Thus, at a minimum, "some weight must still be given to a foreign plaintiff's choice of forum." *Id.*; *see also Metito (Overseas) Ltd. v. Gen. Elec. Co.*, 2006 WL 3230301, at *3 (S.D.N.Y. Nov. 7, 2006) (Defendant "argues that plaintiff's choice is instead due no deference

[23] The underlying dispute's numerous bona fide ties to this forum bely the Ad-Hoc Defendants' assertions that forum shopping and tactical harassment motivated the selection of this forum. The Ad-Hoc Defendants claim (Br. 30 n.29) that the litigation interest agreement evinces forum shopping, misleadingly quoting the words "plaintiff friendly" to suggest Plaintiffs admitted as much in their own submissions. The referenced agreement makes no such admission, and has no relevance to the comparative legal merit of Plaintiffs' claims in this adversary proceeding. Moreover, the Ad-Hoc Defendants' argument that Plaintiffs are forum shopping by litigating where only a minority of defendants are purportedly amenable to suit in this forum rings hollow given their unwillingness to accede to jurisdiction elsewhere. *See CF 135 Flat LLC*, 2016 WL 5945933, at *4 ("[C]ourts generally require the moving defendant" in a *forum non conveniens* case "to show that those [defendants that have been served but not appeared] are at least as amenable to suit in the foreign jurisdiction as they are in the current forum."). No matter where Plaintiffs litigate, a significant number of Defendants will contest jurisdiction.

whatsoever. This argument . . . is clearly incorrect. Even assuming . . . plaintiff was motivated in part by forum shopping . . . that would not mean that plaintiff's forum choice is entitled to 'no' deference."). Accordingly, Defendants must show "the pertinent factors tilt strongly in favor of trial in the foreign forum," *Wiwa*, 226 F.3d at 100, to overcome the deference owed to Plaintiffs' forum choice.

B. México Is Not An Adequate Alternative Forum

Regardless of the degree of deference this Court should afford to Plaintiffs' selection of forum, Defendants' motion to dismiss on *forum non conveniens* grounds should be denied for lack of an adequate alternative forum. "The defendant bears the burden of establishing that a presently available and adequate alternative forum exists." *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 189 (2d Cir. 2009). "An alternative forum is adequate if the defendants are amenable to service of process there, and if it permits litigation of the subject matter of the dispute." *Norex*, 416 F.3d at 157 (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 75 (2d Cir. 2003)). Defendants cannot establish that México satisfies either condition.

1. Defendants Fail To Show That México Meets The Requirements For An Adequate Alternative Forum

First, Defendants have not carried their burden to demonstrate that all defendants are amenable to service of process in México. None "of the Defendants has made any representations—either in their briefs or at oral argument—that they will submit to jurisdiction in the [foreign forum] . . . . Absent any such consent, the [foreign forum] would not be an adequate forum for the Defendants in this action and dismissal should be denied on that basis alone." *Argus Media Ltd. v. Tradition Fin. Servs. Inc.*, No. 09 CIV. 7966 (HB), 2009 WL 5125113, at *5 (S.D.N.Y. Dec. 29, 2009). Moreover, even if *some* defendants were amenable to service of process and subject to jurisdiction in México, "the requirement that a defendant be subject to the

jurisdiction of the alternative forum refers to *all* defendants." *ESI, Inc. v. Coastal Power Production Co.*, 995 F. Supp. 419, 426 (S.D.N.Y. 1998) (emphasis added) (quotations omitted); *see also Concesionaria DHM*, 307 F. Supp. 2d at 563 (holding "the alternative fora offered by [defendant] are not adequate" because "not all defendants are subject to its jurisdiction and granting the motion would require the plaintiff to proceed through multiple suits").

Defendants fail to address this well-established law. Instead, the Ad-Hoc Defendants assert (Br. 32) that they are subject to service in a Mexican proceeding under the Hague Convention, but this fails to address whether, regardless of service, they are all subject to jurisdiction in the Mexican courts. As to jurisdiction, Ad-Hoc Defendants assert (Br. 31-32) that Mexican courts can exercise jurisdiction over all defendants "if they are parties to contracts to be performed in México or are alleged to have committed torts in México." But only the Singapore Rig Owners are party to contracts to be performed in México with Perforadora, and those contracts contain forum selection clauses directing the parties *to this Court*. *See* Compl. ¶¶ 547-50 (detailing Count 17, for breach of Bareboat Charters). Defendants produce no argument that the Mexican courts will disregard this provision and instead take jurisdiction over claims regarding those contracts. Indeed, as explained in the declaration of Plaintiffs' expert Alfonso López-Melih, the Mexican courts would not have personal jurisdiction over the non-Mexican Defendants here or for conduct that took place outside of México. *See* Lopez Decl. ¶ 13.

The actual proceedings in México have borne this out. In late 2017, Oro Negro filed an *incidente de ineficacia de actos juridicos y daños punitivos* (motion to declare actions unenforceable and for punitive damages) against Nordic Trustee and other parties. The motion sought that the Mexican *Concurso* Court declare unenforceable all of Nordic Trustee's actions in furtherance of declaring Oro Negro Drilling in default, including taking over the Singapore Rig

Owners, and acting as their owners and managers, as a violation of Article 87 of the Mexican Bankruptcy Code, which prohibits a party from terminating a contract and worsening a debtor's situation while the debtor is in bankruptcy. The Mexican court denied the motion for lack of jurisdiction and ruled that it could not resolve disputes arising from or related to foreign contracts.[24] The Mexican court would likely rule the same here, declining to resolve this cross-border dispute against Defendants, which arises from or relates to a plethora of non-Mexican contracts such as the Bareboat Charters. Absent consent to jurisdiction, Plaintiffs' speculation about jurisdiction in México is insufficient to carry their burden to demonstrate the adequacy of the alternative forum. *See Madanes v. Madanes*, 981 F. Supp. 241, 266 (S.D.N.Y. 1997) (holding, despite the defendants' arguments that an Argentine court would have jurisdiction, "that it would be improper to dismiss the case absent a proffer by all of the [d]efendants that they would be willing to consent to the jurisdiction of the Argentine court").

Second, Defendants have not carried their burden to establish that Mexican courts "would, in fact, permit litigation of the disputed issues at the core of [plaintiffs'] . . . complaint." *Norex*, 416 F.3d at 157. "[A] case cannot be dismissed on grounds of *forum non conveniens* unless there is presently available to the plaintiff an alternative forum that will permit it to litigate the subject matter of its dispute." *Id.* at 159. The essential subject matter of this dispute concerns Defendants' conspiracy to tortiously interfere with Plaintiffs' contracts with Pemex and the Singapore Rig Owners and seize control of the Rigs.[25] Counts 1-4 and 13-14 allege tortious interference and conspiracy to tortiously interfere with Oro Negro's business relationships. But,

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[24] *In re Perforadora, et al.*, No. 18-11094 ECF 2 ¶ 41. n.10 (Bankr. S.D.N.Y.) (SCC) (Jointly Administered).

[25] Compl. ¶ 1 ("This is an egregious tortious interference case in which a company's creditors and its only customer colluded to drive the company out of business and take over its only assets."); *id.* ¶¶ 214-49 (detailing Ad-Hoc Group's conspiracy to terminate the Oro Negro Contracts and ignore *concurso* orders); *id.* ¶¶ 398-436 (detailing Defendants' interference with Oro Negro's contracts, business relationships, and restructuring efforts).

according to Defendants' own expert, Mexican tort law recognizes neither tortious interference claims nor conspiracy claims. *See* Harfuch Decl. ¶¶ 12-13.

Plaintiffs contend Mexican law recognizes their claims, *see infra* Section VI, but even if Defendants' arguments to the contrary were accepted, Defendants have not shown an adequate alternative forum. The Ad-Hoc Defendants emphasize (Br. 33) the Second Circuit's statement that "[t]he availability of an adequate alternative forum does not depend on the existence of the identical cause of action in the other forum." *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 74 (2d Cir. 1998)). But here, the issue is not the absence of the identical cause of action, but—according to Defendants—the preclusion of *any* cause of action for the misconduct at the heart of this case. As the Supreme Court explained in *Piper*, "where the remedy offered by the other forum is clearly unsatisfactory, the other forum may not be an adequate alternative, and the initial requirement [of the existence of an alternative forum] may not be satisfied." 454 U.S. at 254 n. 22. And courts repeatedly find such a "clearly unsatisfactory" remedy in cases where, as here, plaintiffs are unable to advance their central claims in the foreign forum.[26]

Finally, even if Plaintiffs could litigate the essential subject matter of this action in México, México is not an adequate alternative forum because of the Mexican government's involvement in the underlying actions. *See* Compl. ¶¶ 306-371 (detailing the four criminal investigations against Plaintiffs based on fabricated evidence, false allegations, and potential

[26] *See Argus Media*, 2009 WL 5125113, at *5 (concluding "England is not an adequate alternative forum" because plaintiff "cannot litigate its Copyright Act claims in England"); *Haywin Textile Prod., Inc. v. Int'l Fin. Inv.*, 137 F. Supp. 2d 431, 436 (S.D.N.Y. 2001) ("[Defendant] has failed to demonstrate that [plaintiff's] claims could be prosecuted in Bangladesh. In fact, it argues that Bangladeshi law would prohibit [plaintiff's] claims."); *Parex Bank v. Russian Sav. Bank*, 116 F. Supp. 2d 415, 427 (S.D.N.Y. 2000) ("[Defendant] has failed to meet its burden of proving that Russia will provide any avenue of relief for [plaintiff's] claims as a matter of law."); *Brown v. Marriott Int'l, Inc.*, No. 14-CV-5960 (SLT) (MDG), 2017 WL 4484194, at *6 (E.D.N.Y. Sept. 29, 2017) ("Defendant has failed to meet its burden to show a necessary element of seeking dismissal based on *forum non conveniens*, that St. Kitts permits litigation of vicarious liability and/or agency claims. On this ground alone, the Court can properly deny this motion.").

bribes, and conducted without meaningful process afforded to Plaintiffs); *id.* ¶¶ 372-384 (detailing the Mexican government's involvement in the seizure of the Rigs in violation of 11 U.S.C. § 1520). The Ad-Hoc Defendants themselves acknowledge (Br. 37) that this case "implicate[s] the conduct of Mexican officials." [redacted] ¶¶ 341, 372-84, Defendants cannot carry their burden to demonstrate that México would be an adequate alternative forum. *See HSBC USA, Inc. v. Prosegur Paraguay*, S.A., No. 03 Civ. 3336 (LAP), 2004 WL 2210283, at *3 (S.D.N.Y. Sept. 30, 2004) (detailing specific allegations of government corruption implicated in the conduct that gave rise to the plaintiff's action, which render the plaintiff "likely . . . unable to obtain basic justice in Paraguay").[27]

[redacted] also distinguish this case from others finding México an adequate alternative forum. *See* Ad-Hoc Br. 33 n. 32. In *Osuna v. Citigroup Inc.*, No. 17-cv-1434 (RJS), 2018 WL 6547205, at *8 (S.D.N.Y. Sept. 28, 2018), "Plaintiffs concede[d] that Mexican courts are generally adequate fora for this lawsuit." *Id.* (noting challenges only to Mexican courts' capacity to resolve dismissed claims governed by mandatory forum selection clauses). Nor did the plaintiffs in *Langsam v. Vallarta Gardens*, No. 08 Civ. 2222 (WCC), 2009 WL 8631353, at *6 (S.D.N.Y. June 15, 2009), *Becker v. Club Las Velas*, 94 CIV. 2412 (JFK), 1995 WL 267025, at *2 (S.D.N.Y. May 8, 1995), or *Navarrete De Pedrero v. Schweizer Aircraft Corp.*, 635 F. Supp. 2d 251, 261 (W.D.N.Y. 2009), argue corruption would

[27] The Second Circuit's general instruction for courts to avoid "adversely judging the quality of a foreign justice system absent a showing of inadequate procedural safeguards," *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 73 (2d Cir. 1998), is inapposite here. *First*, Plaintiffs alleged numerous specific examples of inadequate procedural safeguards, including the four criminal investigations against Plaintiffs based on fabricated evidence, false allegations, and potential bribes, *see* Compl. ¶ 432(a), and the *ex parte* Seizure Order obtained through those criminal investigations, *see id.* ¶¶ 368-71. *Second*, courts in this circuit have previously denied comity to Mexican court orders governing disputes involving Pemex. *See Corporacion Mexicana De Mantenimiento Integral*, 832 F.3d at 111 (affirming a Southern District opinion denying comity to a Mexican court's decision that "offends basic standards of justice in the United States").

preclude a meaningful remedy, much less specifically allege government and foreign judicial corruption in the underlying dispute. *See Daventree Ltd. v. Republic of Azerbaijan*, 349 F. Supp. 2d 736, 756 (S.D.N.Y. 2004), *opinion clarified on denial of reconsideration,* 2005 WL 2585227 (S.D.N.Y. Oct. 13, 2005) ("In contrast with general allegations of corruption, the possibility that the Sovereign defendants could dictate the outcome of this dispute through their control over [foreign] courts would effectively foreclose the plaintiffs' right to pursue their claims and render the [foreign] courts an inadequate forum.").

2. Defendants Are Estopped From Arguing That México Is An Adequate Alternative Forum

Defendants are also barred as a matter of judicial estoppel from arguing that México is an adequate alternative forum because they argued successfully the exact opposite in Singaporean courts. "[J]udicial estoppel will apply if: [A] a party's later position is clearly inconsistent with its earlier position; [B] the party's former position has been adopted in some way by the court in the earlier proceeding; and [C] the party asserting the two positions would derive an unfair advantage against the party seeking estoppel." *BPP Illinois, LLC v. Royal Bank of Scotland Grp. PLC*, 859 F.3d 188, 192 (2d Cir. 2017) (quotations omitted). All three elements are satisfied here.

First, Defendants' positions are clearly inconsistent. Here, they argue that México is an adequate alternative forum to resolve this litigation. In Singapore, in stark contrast, Defendants argued that México was *not* an adequate forum for resolution of claims intimately related to those at issue here. Morillo Decl. ¶ 4, Ex. 1.

Second, the Singaporean court accepted Defendants' position by rejecting the *forum non conveniens* argument and deciding the appeal on the merits. *Id.*

Third, Defendants would derive an unfair advantage from their inconsistent positions. Defendants' approach is nothing more than forum shopping: claiming the Mexican courts are inadequate when the Singapore courts are advantageous to them, and then claiming the Mexican courts are adequate when they want to evade justice in the U.S. courts. It is clearly improper to use the *forum non conveniens* doctrine for this kind of gamesmanship.

C. Private and Public Factors Favor Litigation In This Forum

Defendants fail to carry their burden to demonstrate that "the balance of private and public interest factors tilts heavily in favor of the alternative forum." *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 189 (2d Cir. 2009). This provides an independent basis to reject a motion based on *forum non conveniens*. *See Iragorri*, 274 F.3d at 74-75 (Defendants "do[] not carry the day simply by showing the existence of an adequate alternative forum. The action should be dismissed only if the chosen forum is shown to be genuinely inconvenient and the selected forum significantly preferable.").

1. Private Factors

The five private factors to consider are: "(a) the ease of access to evidence; (b) the availability of compulsory process; (c) the cost for cooperative witnesses to attend trial; (d) the enforceability of a judgment; and (e) all other practical matters that might shorten any trial or make it less expensive." *Do Rosario Veiga v. World Meteorological Organisation*, 486 F. Supp. 2d 297, 306 (S.D.N.Y. 2007).

First, this forum offers the best access to evidence concerning Defendants' conspiracy and strategy. Leand resides in New York, and AMA's and Fintech's principal place of business is also here. Compl. ¶¶ 24, 26, 69. Thus, evidence related to their direction of the Ad-Hoc Group's conspiracy resides in New York, especially as the Ad-Hoc Group met repeatedly in New York to strategize. *Id.* ¶ 314. In total, six Defendants can be found in the United States. In

addition, many of the key parties located in México and abroad are agents of or controlled by the Bondholders, and thus AMA, Leand, and the Ad-Hoc Group can obtain any needed evidence from those parties by virtue of their control of those entities. *See* Compl. ¶¶ 221, 324, 427-428.

[redacted] Morillo Decl. ¶ 5, and no other entity has stated that it has evidence or witnesses that cannot be produced here.

Crucially, the course of proceedings has shown that access to evidence is not a problem in this forum. Plaintiffs have already conducted depositions here with key witnesses. And Plaintiffs have already uncovered numerous relevant emails, texts, chats, invoices, drafts and other records through Chapter 15 discovery.

Even assuming Defendants are correct that evidence does not reside exclusively in this forum (and the Chapter 15 discovery demonstrates they are not), that evidence is dispersed throughout the world (and not in México). Two directors of the Singapore Defendants reside in Singapore and one in Florida, *id.* ¶¶ 82-87, and thus, evidence related to their actions could be found there. This global dispersion of evidence and witnesses weighs against dismissal. *Genpharm Inc. v. Pliva-Lachema a.s.*, 361 F. Supp. 2d 49, 60 (E.D.N.Y. 2005) (noting that litigation in a foreign forum would only shift inconvenience because "[w]itnesses and documents are scattered throughout the world"); *CF 135 Flat LLC*, 2016 WL 5945933, at *6 ("In light of the degree to which relevant evidence is spread throughout the globe, it is difficult to say that this factor meaningfully differentiates the convenience of litigating in this forum versus the proposed [foreign] forum.").

Furthermore, as explained in the declaration of Plaintiffs' expert Alfonso López-Melih, access to evidence held by third parties is far superior in the U.S. courts than in the Mexican

courts, which limit third party discovery. *See* Lopez-Melih Decl. ¶ 23. In particular, parties in a Mexican litigation may not investigate or develop the facts by obtaining information from Defendants or third parties during the case and, to prove their case, must rely almost exclusively on documents in their possession and on witnesses they know of when filing their pleadings. *Id.* ¶¶ 23-31. In addition, U.S. courts allow for much more efficient access to evidence abroad through discovery procedures than do Mexican courts. *Id.* ¶ 30.

In any event, Defendants have not identified *any* relevant evidence in México that has not or cannot be produced here. Thus, even if Defendants could demonstrate the vast majority of the evidence were in México (and they cannot), this factor would still fail to establish the inconvenience necessary to justify dismissal: "the difficulties of discovery are mitigated by instant communication and rapid transport, especially for sophisticated corporate entities such as the parties in this case, thus diminishing any supposed inconvenience." *Terra Firma Investments (GP) 2 Ltd. v. Citigroup Inc.*, 725 F. Supp. 2d 438, 443 (S.D.N.Y. 2010); *see also Metito (Overseas) Ltd. v. Gen. Elec. Co.*, 2006 WL 3230301, at *6 ("For many years, courts in this Circuit have recognized that modern technologies can make the location of witnesses and evidence less important to the *forum non conveniens* analysis, particularly where the parties are major corporations.").

Second, Defendants have also failed to carry their burden to demonstrate that concerns for compelling witnesses justify dismissal. Defendants do not "identify with specificity the witnesses who will be necessary to litigate this action but whose presence in a New York court will be difficult to secure. Such identification is generally required for a *forum non conveniens* dismissal." *Haywin Textile Prod., Inc. v. Int'l Fin. Inv.*, 137 F. Supp. 2d 431, 436 (S.D.N.Y. 2001). Although the Ad-Hoc Defendants provide (Br. 35) a general list of necessary witnesses

by their employer ("Oro Negro and Deutsche Bank México, S.A. employees, the Mexican prosecutors, representatives the Mexican tax agency, and former Pemex officials"), "there is no evidence that they would be unwilling to testify, which renders the lack of a subpoena power a less compelling consideration." *Shtofmakher v. David*, No. 14 Civ. 6934 (AT), 2015 WL 5148832, at *3 (S.D.N.Y. Aug. 17, 2015); *see also Alfandary v. Nikko Asset Mgmt. Co.*, 337 F. Supp. 3d 343, 355 (S.D.N.Y. 2018), *reconsideration denied,* 2019 WL 2525414 (S.D.N.Y. June 19, 2019) ("Defendants have also cited concerns about compelling unwilling witnesses. But neither specific witnesses nor their testimony have been identified, and even if such a list had been provided, it has not shown why the testimony of these witnesses could not be obtained in the form of depositions or letters rogatory." (quotations and citations omitted)).

Moreover, there are key witnesses that likely would *not* be available to testify in a proceeding in México. In particular, Gil, Oro Negro's former CFO Miguel Angel Villegas, and two of Oro Negro's board members, Jose Antonio Cañedo White and Carlos Williamson-Nasi, cannot leave the United States due to the international arrest warrants the Ad-Hoc Group have procured against them. *Perez* Compl. ¶¶ 131, 137. And these are the crucial witnesses to evaluate the validity of Defendants' defense as to why Pemex terminated the contracts and whether Oro Negro did in fact commit any crimes justifying the Mexican criminal investigations. Because these witnesses cannot go to México, and especially because this is a direct result of Defendants' improper and unlawful actions, access to witnesses is far superior in this forum.

Third, as to costs, Defendants have failed to demonstrate that dismissal for *forum non conveniens* would do anything but shift the inconvenience of transporting witnesses to Plaintiffs, who would attempt to bring witnesses from the Ad-Hoc Group based in New York, including AMA, to México. *CF 135 Flat LLC*, 2016 WL 5945933, at *7 ("In sum, regardless of where this

dispute is litigated, litigation will be inconvenient and there is little net convenience to be gained by sending this dispute to [the foreign forum].").

Fourth, Defendants argue (Br. 36) that Mexican judgments would be enforceable through Mexican procedures for enforcing judgments against non-resident litigants. But Defendants' repeated failures to comply with the orders of Mexican courts bely this assertion. *See* Compl. ¶¶ 211-271 (summarizing Defendants' numerous actions in contravention of the *concurso* proceeding). Moreover, Plaintiffs are unaware of any assets that any (let alone all) of Defendants have in México. As a result, a Mexican judgment would be difficult, if not impossible, to enforce against Defendants.

Finally, the existence of claims that undisputedly belong in this forum further supports the private interests in keeping the litigation here. As explained *infra* Section II.B., the Bareboat Charters contain a forum selection clause stipulating venue in this Court. And while this clause does not cover all of the claims here, there is no private interest that would support splitting up the claims into different fora. That is especially true because Plaintiffs have filed a second complaint against the Bondholders in this Court, after the filing of this suit, arising from additional, baseless criminal accusations brought by the Ad-Hoc Group (acting through the Singapore Rig Owners it controls). *See Perez, et al. v. Asia Research Capital Management, et al.,* Adv. No. 19-01360-scc, (*In re Perforadora Oro Negro, S. de R.L. de C.V., et al.*, No. 18-11094) (Bankr. S.D.N.Y.). This separate adversary proceeding in the Chapter 15 action arises under contracts governed by New York law and stipulating to a forum in New York. *See Perez* Compl. ¶ 55. Given the overlap in the parties and allegations, and that this new adversary proceeding will certainly remain in this Court, it would be irrational to dismiss the instant case on the basis of convenience. This Court should reject the Singapore Rig Owners' invitation (Br.

27 n.17) to sever and dismiss for *forum non conveniens* the non-Contract claims for these same reasons: forcing Plaintiffs to seek relief against the same Defendants for the same underlying tortious conduct in multiple fora wastes judicial resources.

2. Public Factors

The public factors this Court must weigh are: "(a) administrative difficulties relating to court congestion; (b) imposing jury duty on citizens of the forum; (c) having local disputes settled locally; and (d) avoiding problems associated with the application of foreign law." *Do Rosaria Veiga*, 486 F. Supp. 2d at 307. Defendants do not argue that the first two factors support dismissal, and the other factors also weigh against dismissal.

The interests in having local disputes settled locally favors retaining jurisdiction because New York has a greater interest in resolving this dispute than does México. As explained *infra* Section IV, Defendants' conspiracy at the heart of this adversary proceeding [redacted] Thus, "the United States has an interest in settling this dispute locally because important underlying activities took place here." *Am. Stock Exch., LLC v. Towergate Consultants Ltd.*, No. 03 CIV. 856 (RMB), 2003 WL 21692814, at *5 (S.D.N.Y. July 21, 2003). In addition, numerous Defendants reside in this forum, conduct significant business in this forum, derive investment from this forum, or are traded on the exchanges in this forum. The United States clearly has a strong interest in the conduct of its own residents and those who do substantial business here. *Ancile Inv. Co. v. Archer Daniels Midland Co.*, No. 08 CIV. 9492 (PAC), 2009 WL 3049604, at *8 (S.D.N.Y. Sept. 23, 2009) ("New York has a cognizable interest in this matter because [defendant] is a U.S.-based multinational corporation that conducts significant operations here."). Moreover, as explained *infra* Section II.B., the contracts governing multiple counts contain forum selection clauses directing the parties to this forum, and Defendants that are party to those contracts previously initiated an action in this forum at the

direction of the Ad-Hoc Group. Defendants' choice of a United States forum in contracts at issue here, and in litigating related claims to those at issue here, further establishes the interest of the United States in this suit. Furthermore, DOJ is investigating Pemex (which issues most of its debt in the U.S. financial markets) for numerous instances of bribery, which further bolsters the existence of a United States interest in addressing issues related to Pemex.[28]

Plaintiffs also allege violations of the laws of this forum. *DiRienzo*, 294 F.3d at 28 (noting "this country's interest in having United States courts enforce United States . . . laws"). Defendants err in arguing (Br. 37) that the possibility of applying foreign law supports dismissal. As explained *infra* Sections IV and VI, New York law governs the tort claims, and Plaintiffs' claims under Mexican law are pled in the alternative. And Plaintiffs' expert has explained that the Mexican courts would also apply U.S. law, based both on the location of the alleged misconduct and the place of incorporation or principal place of business of numerous Defendants. *See* Lopez Decl. ¶18. At a minimum, U.S. law will govern those disputes regarding the Bareboat Charters, *see* Compl. ¶ 79, and Defendants' violation of 11 U.S.C. § 1520(a)(1) and this Court's Comity Order. Thus, even assuming foreign law applied to some claims, "[t]he interest in avoiding the application of foreign law therefore does not favor either forum." *DiRienzo*, 294 F.3d at 31 (addressing a case in which "an Ontario court would likely apply American law to at least" some of the claims, and "an American court would likely apply Canadian law to" other claims). In any event, even if retaining the case in this Court required more application of foreign law, "[t]he Second Circuit . . . has cautioned against an excessive

[28] Robbie Whelan, *Secret Recordings Describe Extensive Bribery at México's Pemex*, THE WALL STREET JOURNAL (Oct. 11, 2019), https://www.wsj.com/articles/secret-recordings-describe-extensive-bribery-at-Méxicos-pemex-11570804717.

reluctance to undertake the task of deciding foreign law, a chore federal courts must often perform." *Metito (Overseas)*, 2006 WL 3230301, at *7 (quotations and citations omitted).

Also contrary to Ad-Hoc Defendants' suggestion (Br. 39-40), the existence of parallel litigation does not weigh in favor of dismissal. "The existence of related litigation, while of major significance in § 1404(a) cases, is not listed as a relevant factor in the *forum non conveniens* analysis . . . ." *Guidi v. Inter-Cont'l Hotels Corp.*, 224 F.3d 142, 148 (2d Cir. 2000); *see also Am. Stock Exch., LLC v. Towergate Consultants Ltd.*, 2003 WL 21692814, at *5 ("[T]he pendency of the United Kingdom action does not factor into the *forum non conveniens* decision."). Rather, "[t]he mere existence of parallel foreign proceedings does not negate the district courts' virtually unflagging obligation to exercise the jurisdiction given them." *Royal & Sun All. Ins. Co. of Can. v. Century Int'l Arms, Inc.*, 466 F.3d 88, 92 (2d Cir. 2006) (citation and quotations omitted). "In particular, parallel proceedings in the same in personam claim should ordinarily be allowed to proceed simultaneously." *Leopard Marine & Trading, Ltd. v. Easy St. Ltd.*, 896 F.3d 174, 190 (2d Cir. 2018) (citing *Royal & Sun*, 466 F.3d at 92). Parallel litigation is particularly irrelevant to this Court's *forum non conveniens* analysis because the Ad-Hoc Defendants, against whom Plaintiffs bring fifteen out of twenty-one claims, are not party to any of the Mexican proceedings. *See* Compl. ¶¶ 252, 255, 324, 343, 349, 394; *see Guidi*, 224 F.3d at 148 (noting the only cases that supported the consideration of related litigation in a foreign forum involve "parties to the American and foreign actions" that "were identical").

Finally, the Ad-Hoc Defendants' reliance (Br. 40-41) on "sovereign prerogatives" is similarly unavailing. The list of public factors for consideration when adjudicating *forum non conveniens* does not include "sovereign prerogatives." And the sole *forum non conveniens* case the Ad-Hoc Defendants rely upon, *Figueiredo Ferraz E Engenharia de Projeto Ltda. v. Republic*

of Peru, 665 F.3d 384, (2d Cir. 2011), is readily distinguishable. That case involved a plaintiff's request for a court to disregard a Peruvian statute that limited payment of an arbitral award. *Id.* at 392 (explaining "the public factor of permitting Peru to apply its cap statute to the disbursement of governmental funds to satisfy the Award tips the FNC balance decisively against the exercise of jurisdiction in the United States"). But the relief sought in this action does not require this Court to undermine any Mexican statute; rather, Plaintiffs seek relief for conduct perpetrated from the United States by a multitude of parties to destroy Oro Negro, as well as for violations of this Court's recognition order and the U.S. Bankruptcy Code. Compl. ¶¶ 211-71. Moreover, *Figueiredo* directed the "district court to dismiss case on *forum non conveniens* grounds where the disputed agreement included a clause" subjecting the parties to the "competence of the Judges and Courts of the City of Lima." *México Infrastructure Fin., LLC v. Corp. of Hamilton*, No. 17-CV-6424 (VSB), 2019 WL 1206690, at *7 (S.D.N.Y. Mar. 14, 2019). Here, the relevant forum selection clause in the Bareboat Charters directs the parties to this Court. The remaining, out-of-circuit cases that the Ad-Hoc Defendants cite (Br. 40-41) to justify dismissal on this factor are irrelevant to *forum non conveniens* analysis. *See Int'l Ass'n of Machinists & Aerospace Workers, (IAM) v. Org. of Petroleum Exporting Countries (OPEC)*, 649 F.2d 1354 (9th Cir. 1981) (affirming dismissal under the act of state doctrine); *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006) (reversing and dismissing for lack of ripeness and lack of personal jurisdiction).[29]

[29] Similarly, Ad-Hoc Defendants assert (Br. 39-40 n.34) that "principles of 'adjudicative comity' further support dismissal" for *forum non conveniens*. But Defendants fail to identify any support for the consideration of such principles when assessing *forum non conveniens*. In any event, to the extent adjudicative comity were relevant in this Court's *forum non conveniens* analysis (it is not), Defendants' argument fails because of differences in the parties and underlying claims involved in the *concurso* proceedings. *See supra* at 25. It also fails because courts considering abstention on adjudicative comity grounds must assess the "the adequacy of the alternate forum." *Leopard Marine*, 896 F.3d at 190; *see also Accent Delight Int'l Ltd. v. Sotheby's*, 394 F. Supp. 3d 399, 412, (S.D.N.Y. 2019). As explained *supra*, México does not constitute an adequate alternative forum here.

II. THIS COURT HAS PERSONAL JURISDICTION OVER ALL DEFENDANTS

In assessing whether it has personal jurisdiction over the Moving Defendants,[30] the court need only determine whether (1) Plaintiffs have sufficiently alleged that Defendants have "certain minimum contacts" with the forum—here, the United States;[31] and (2) exercising such jurisdiction is reasonable in the circumstances. *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013). Plaintiffs can satisfy the minimum contacts requirement if (1) the Moving Defendants' affiliations with the United States were "so continuous and systematic as to render [them] essentially at home" in the United States, thereby establishing general jurisdiction; or (2) the claims in this suit arose from Defendants' conduct in the United States, thereby establishing specific jurisdiction. *Daimler AG v. Bauman*, 571 U.S. 117, 127, 139 (2014) (quotations omitted).

At the pleading stage, Plaintiffs need only make a prima facie showing that personal jurisdiction exists, *S. New Eng. Tel. Co. v. Glob. NAPS Inc.*, 624 F.3d 123, 138 (2d Cir. 2010), and this "prima facie showing may be established solely by allegations." *Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A.*, 722 F.3d 81, 85 (2d Cir. 2013). The court must assume that Plaintiffs' factual allegations are accurate and construe "pleadings and affidavits in the light most favorable to plaintiffs, resolving all doubts in their favor." *Id.* at 85 (quotations and citation omitted). As set forth below, Plaintiffs have made such a prima facie showing.

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[30] The term "Moving Defendants" in this section refers to the 13 defendants who moved to dismiss the complaint on August 26, 2019 for lack of personal jurisdiction under Rule 12(b)(2). The Moving Defendants are: (1) five of the Ad-Hoc Defendants: Ercil, ARCM, CQS, GHL, and SFIL; (2) Seadrill; (3) the five Singapore Rig Owners; and (4) the two Foreign Singapore Directors (together with the Singapore Rig Owners, "Foreign Singapore Defendants"). *See* Foreign Defendants Br. 1; Singapore Defendants Br. 1, 6-7; Seamex Br. 3, 42.

[31] In examining its exercise of personal jurisdiction in a federal bankruptcy proceeding, the court should assess a party's contacts with the United States as a whole and not the forum state. *See, e.g.*, *In re Hellas Telecommunications (Luxembourg) II SCA*, 524 B.R. 488, 506-07 (Bankr. S.D.N.Y. 2015); *Enron*, 316 B.R. 434, 444-45 (Bankr. S.D.N.Y. 2004). This is undisputed by the Moving Defendants.

A. This Court Has Specific Jurisdiction Over All Moving Defendants Based On Their Own Contacts With The United States And Those Of Their Co-Conspirators In Connection With The Claims

Plaintiffs satisfy the minimum contacts requirement sufficient for specific jurisdiction. There is specific jurisdiction where the plaintiff's injuries "arise out of or relate to" the forum contacts. *See, e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); *see also, e.g.*, *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017).[32] Plaintiffs' burden is not a heavy one: "[s]o long as it creates a 'substantial connection' with the forum, even a single act can support jurisdiction." *Burger King Corp.,* 471 U.S. at 475 n.18. In short, a claim "arise[s] out of or relate[s] to at least one of the defendant[s'] contacts with the forum when there is a substantial connection between the two, such that the assertion of jurisdiction is fair and reasonable." *Alfandary*, 337 F. Supp. 3d at 359. The Moving Defendants attempt to define the test narrowly as only "arising out of," but they provide no argument for ignoring the well-established law that contacts "relate[d] to" the claim, or a "substantial connection," suffice.

As set forth below, there is specific jurisdiction because Plaintiffs' claims arose out of or relate to Moving Defendants' and their co-conspirators' conduct in the United States.

1. There Is Specific Jurisdiction Over All Of The Moving Defendants Based On The Forum Acts Of Their Co-Conspirators

This Court can exercise personal jurisdiction over each of the 13 Moving Defendants under the principles of conspiracy, which all of the Moving Defendants simply ignore. In cases involving a conspiracy among multiple defendants—as is alleged here—there is specific jurisdiction over forum non-residents based on the acts of co-conspirators in the forum that

[32] Moving Defendants make no separate argument that they did not purposefully avail themselves of the forum, and the forum contacts discussed below plainly satisfy the purposeful availment requirement. And for jurisdiction based on conspiracy, the existence of the co-conspirators' overt acts in furtherance of the conspiracy establishes purposeful availment. *See Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 87 (2d Cir. 2018).

furthered the conspiracy. *See Charles Schwab Corp.*, 883 F.3d at 86-87; *see also Contant v. Bank of Am. Corp.*, 385 F. Supp. 3d 284, 291-92 (S.D.N.Y. 2019); *Alfandary*, 337 F. Supp. 3d at 363-64. As Judge Posner explained nearly 30 years ago, "[i]f through one of its members a conspiracy inflicts an actionable wrong in one jurisdiction, the other members should not be allowed to escape being sued there by hiding in another jurisdiction." *Stauffacher v. Bennett*, 969 F.2d 455, 459 (7th Cir. 1992), *superseded on other grounds by repeal of rule*, Fed. R. Civ. P. 4(f) (repealed 1993).

The court in *Schwab* "set[] forth the appropriate test for alleging a conspiracy theory of jurisdiction: the plaintiff must allege that (1) a conspiracy existed; (2) the defendant participated in the conspiracy; and (3) a co-conspirator's overt acts in furtherance of the conspiracy had sufficient contacts with a state to subject that co-conspirator to jurisdiction in that state." *Schwab*, 883 F.3d at 87. Here, Plaintiffs' allegations meet each of these three elements.

First, Plaintiffs have clearly alleged the existence of a conspiracy—[redacted] Moving Defendants do not and cannot contest this element.

Second, Plaintiffs have alleged that Moving Defendants participated in the conspiracy, including by, among other things, filing the New York Litigation, initiating criminal proceedings [redacted] To the extent Moving Defendants contest their participation in the conspiracy when challenging the conspiracy claims under New York law, their arguments fail for the reasons stated *infra* Section V.

Third, members of the conspiracy undertook actions—in fact, very extensive and critical actions—in the United States in furtherance of the conspiracy. Specifically, Plaintiffs have

alleged that a number of Defendants (including some of the Moving Defendants) committed acts in the United States in furtherance of the scheme to seize the Rigs. [redacted] Defendants' in-forum acts include the following:

- [redacted]

[33] *See, e.g.*, Morillo Decl. Ex. 3 [redacted] ORO-NEGRO-AMA_00001142-1147) [redacted] Morillo Decl. Ex. 4 [redacted] (ORO-NEGRO-AMA_00004411-4418) [redacted] Morillo Decl. Ex. 5 [redacted] (ORO-NEGRO-AMA_00044247-44248) [redacted]

[redacted]

- Seadrill initiated the Chapter 11 proceeding in U.S. Bankruptcy Court in Texas (*id.* ¶¶ 186-87);

[redacted]

[34] *See* Morillo Decl. Ex. 6 [redacted] ORO-NEGO-AMA_00022190-22194).)

[35] *See e.g.*, Morillo Decl. Ex. 6 [redacted] (ORO-NEGRO-AMA_00022190) [redacted] Morillo Decl. Ex. 7 (ORO-NEGRO-AMA_00031541-31543) [redacted] Morillo Decl. Ex. 5 (November 5, 2018) (ORO-NEGRO-AMA_00044247-44248) [redacted]

- Across the latter half of 2018, AMA, Alterna, and Contrarian, the U.S.-based Ad-Hoc Group Defendants, engaged in repeated discovery abuses in connection with the Chapter 15 proceeding—including failing to comply with this Court's orders—as a means to delay and obfuscate Plaintiffs' attempts to uncover Defendants' misdeeds in trying to seize the Rigs (*id.* ¶¶ 294, 301).

Any of these acts—and certainly all of them together—constitute acts in the United States in furtherance of the conspiracy to interfere with Oro Negro's contracts and business relationships and seize the Rigs. *In re Med-Atl. Petroleum Corp.*, 233 B.R. 644 (Bankr. S.D.N.Y. 1999) (purposefully engaging in activities, including meetings, in New York in furtherance of conspiracy was sufficient to establish personal jurisdiction); *Sonterra v. Credit Suisse*, 277 F. Supp. 3d 521, 588-89 (personal jurisdiction could be maintained over foreign defendant bank where it conspired with a co-conspirator trader located in the forum); *Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 466-67 (1988) (jurisdiction over Texas drilling company was properly sustained because drilling company used corporation licensed to do business in New York to secure plaintiff's investment, it paid New York licensed company for that service, and it received the balance of plaintiff's invested funds directly from the New York licensed company when it issued a check payable to itself); *Alfandary*, 337 F. Supp. 3d at 364 (finding conspiracy jurisdiction by imputing in forum overt acts of co-conspirators, including sending fraudulent purchase orders relevant to the overall scheme to the United States, on foreign defendants and noting in dicta that the co-conspirators exercised "control" over foreign defendants).

2. Moving Defendants Engaged In Multiple Acts In The United States As Part Of A Conspiracy To Interfere with Oro Negro's Contracts and Take The Rigs

Even putting aside jurisdiction based on conspiracy, Plaintiffs have pleaded extensive factual allegations regarding Moving Defendants' actions in or directed to the United States relating to the scheme at the core of the complaint.[36]

(a) In 2017, The Ad-Hoc Group Engaged U.S.-Based Advisors And, In 2018, Met With Co-Conspirators In New York To Strategize Its Plan To Seize The Rigs

First, in 2017, the Ad-Hoc Group—which included, by no later than May 2017, Defendants Alterna, ARCM, CQS, GHL, MFC and SFIL—engaged New York-based advisors to advise them in connection with Oro Negro. Compl. ¶ 166, 173. [redacted]

In December 2018, the Ad-Hoc Group retained New York-based law firm Paul Weiss as its legal advisor. *Id.* ¶ 166.

Second, as noted *supra* at II(A)(1), [redacted] Plaintiffs' allegations [redacted] alone, are sufficient to find specific jurisdiction over ARCM, CQS, GHL and SFIL—each a member of the Ad-Hoc Group. *See, e.g.*, *Persh v. Petersen*, No. 15 CIV. 1414 LGS, 2015 WL

[36] The Complaint does not identify any specific U.S. contacts of Seadrill, Ercil, Bartlett, or Hancock, but such contacts may be revealed in jurisdictional discovery, and regardless, there is jurisdiction over them based on conspiracy.

5326173, at *4 (S.D.N.Y. Sept. 14, 2015) (denying motion to dismiss because meetings in New York to plan equity acquisition deal were sufficient to establish personal jurisdiction over foreign defendant in action alleging tortious interference and fraud).

(b) In 2018, the Singapore Rig Owners Filed the New York Litigation in an Attempt to Circumvent the *Concurso* Court and Seize the Rigs

In March 2018, the Singapore Rig Owners filed the New York Litigation and explicitly sought an order from the court that, *inter alia*, compelled Perforadora to transfer the Rigs to them. Compl. ¶ 285. Acting under the direction of the Ad-Hoc Group, the Singapore Rig Owners did so in order to circumvent the *Concurso* Court's October 5 and 11 Orders expressly enjoining termination of the Bareboat Charters—which precluded the Ad-Hoc Group's ability to immediately assume control over the Rigs. *Id.* ¶¶ 285-86, 288. The New York Litigation was thus yet another legal maneuver (out of many) that the Moving Defendants took as part of their two-year long conspiracy to interfere with Oro Negro's contracts and business relationships and seize the Rigs, thereby substantially harming Plaintiffs.

In arguing that the New York Litigation is insufficient to convey specific jurisdiction, the Singapore Rig Owners assert (Br. 14-15) that a defendant's consent to jurisdiction in one case (i.e., the New York Litigation) does not necessarily confer jurisdiction in another case (i.e., the instant action). However, that is not what Plaintiffs allege. Rather, the point here is that the New York Litigation itself was part of the global scheme to seize the Rigs and, through it, the Singapore Rig Owners purposely directed their conduct at the United States. The only cases the Singapore Owners cite are readily distinguishable, as they concern a case filed in the United States that was wholly unrelated to the case at issue. *See Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 50 n.5 (2d Cir. 1991) and *CLdN Cobelfret Pte Ltd. v. ING Bank N.V.*, No. 16-CV-4312 (KBF), 2016 WL 6670996, at *2 (S.D.N.Y. June 10, 2016). Here, the litigations are

unquestionably related, and in such a situation, that does suffice for jurisdiction: "[T]here is nothing unfair, or violative of due process, about requiring a party that has affirmatively sought the aid of our courts with regard to a particular transaction to submit to jurisdiction in the same forum as a defendant with regard to the same transaction with the same party." *China Nat. Chartering Corp. v. Pactrans Air & Sea, Inc*., 882 F. Supp. 2d 579, 592 (S.D.N.Y. 2012) (citations omitted).

B. The New York Forum Selection Clause in the Bareboat Charters Subjects the Singapore Rig Owners to Personal Jurisdiction in the United States as to All Claims

This Court also has personal jurisdiction over the Singapore Rig Owners as to all of Plaintiffs' claims—not just the contractual claims—because they consented to jurisdiction on the basis of the New York forum selection clause in the Bareboat Charters.[37] *See Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC*, 366 F. Supp. 3d 516, 560 (S.D.N.Y. 2018) (citation omitted) (stating that parties can consent to personal jurisdiction through forum selection clauses in contractual agreements); *see also Magi XXI, Inc. v. Stato della Citta del Vaticano*, 714 F.3d 714, 721 (2d Cir. 2013) (courts "give substantial deference to the forum selected by the parties, particularly where this choice was made in an arm's-length negotiation by experienced and sophisticated businessmen") (citations and quotations omitted).

Here, each of the claims against the Singapore Rig Owners relates to the same underlying scheme: a conspiracy to force Oro Negro into default as a means to foreclose on the Rigs, including by (among other acts of misconduct) terminating the Oro Negro Contracts and

[37] The Bareboat Charters' forum selection clause states: "The parties to this Charter hereby irrevocably submit to the jurisdiction of the courts of the State of New York . . . solely in respect of the interpretation and enforcement of the provisions of this Charter and of the documents referred to in this Charter, and in respect of the transactions contemplated hereby . . . ." *See, e.g.,* Amended and Restated Oro Negro Decus Pte. Ltd. Bareboat Charter, § 19.1 ("Decus Bareboat Charter").

Bareboat Charters. In order to do so, the Singapore Rig Owners (1) terminated the Bareboat Charters in bad faith based solely on Pemex's own unilateral and unlawful termination of the Oro Negro Contracts—which was directly caused by the actions of the Ad-Hoc Group (Compl. ¶¶ 431, 432, 442)[38]; and (2) did not comply with their terms, including by failing to pay the Reimbursement Costs to Perforadora which, in turn, hindered Perforadora's ability to pay past-due Charter Hire to the Singapore Rig Owners. *Id.* ¶¶ 130-39, 431-32, 519. Moreover, the Singapore Rig Owners terminated the Bareboat Charters despite the existence of the *Concurso* Court's October 5 and 11, 2017 Orders expressly enjoining their termination. *Id.* ¶¶ 286, 424.

In addition, Plaintiffs have alleged that the Singapore Rig Owners engaged in other misconduct as a means to justify breaching provisions of and unlawfully terminating the Bareboat Charters (the basis for the contract claims) and force Oro Negro to dispossess the Rigs. These other claims are as follows:

- ***Counts 7*** and ***8*** (tort claims) and ***Count 21*** (unjust enrichment claim) assert that the Singapore Rig Owners (1) [redacted] (Compl. ¶¶ 487, 493, 567, 572 and 577);

[38] As alleged by plaintiffs, defendants unlawfully terminated the Charters as follows: (i) the Ad-Hoc Group gained full control of the Singapore Rig Owners by appointing two new directors; (ii) the Singapore Rig Owners did not validly terminate the Bareboat Charters because Pemex unlawfully terminated the Oro Negro Contracts; and (iii) the Singapore Rig Owners demanded that Perforadora dispossess the Rigs and turn them over to the Singapore Rig Owners on the sole basis the Pemex had validly terminated the Oro Negro Contracts, which it had not. (Compl. ¶ ¶ 236, 251, 420.)

- ***Counts 9, 10*** and ***11*** (tort claims) assert that the Singapore Rig Owners "have used, or conspired to use, the Mexican criminal investigations not to prosecute crimes and pursue their rights as victims of criminal offenses but rather to cause the destruction of Integradora and its subsidiaries, including cutting their access to cash and depriving them of the Rigs through the Seizure Order and the Rigs Take-Over Order" (*id.* ¶¶ 497, 504, 511); and
- ***Count 18*** seeks a declaratory judgment proclaiming that all Defendants violated 11 U.S.C. § 1520(a)(1)'s bankruptcy stay and the Comity Order by interfering in Perforadora's right to possess the Rigs based on Defendants' alleged conduct in filing lawsuits or seeking to repossess the Rigs (*id.* ¶¶ 551-565).

The Singapore Rig Owners concede that the two contract claims (Counts 12 and 17) are subject to the New York forum selection clause. However, they argue (Br. 12-13) that the Court cannot exercise personal jurisdiction over them as to the other claims because they neither seek to "interpret' nor "enforce" the Bareboat Charters and are not "in respect of the transactions contemplated" by the Bareboat Charters. But when ascertaining whether the claims and parties involved in a suit are subject to a forum selection clause, a court should "examine the substance of the claims, shorn of their labels." *Phillips v. Audio Active Ltd.*, 494 F.3d 378, 388-89 (2d Cir. 2007) (citations omitted). Moreover, a "contractually-based forum selection clause also covers tort claims" if the tort claims "ultimately depend on the existence of a contractual relationship" between the signatories. *Magi XXI, Inc.*, 714 F.3d at 724 (citations omitted). "Put another way, contract-related tort claims involving the same operative facts as a parallel claim for breach of

contract should be heard in the forum selected by the contracting parties." *BMW of N. Am. LLC v. M/V Courage*, 254 F. Supp. 3d 591, 597 (S.D.N.Y. 2017) (finding that a contract-oriented forum selection clause extends to tort claims between the parties).

Here, for the reasons set forth above, Plaintiffs' non-contractual claims are inextricably linked to and cannot be divorced from the claims relating to the Bareboat Charters. *See Power Up Lending Grp., Ltd. v. Nugene Int'l, Inc*., 17-CV-6601 (SJF)(AKT), 2019 WL 989750, at *3 (E.D.N.Y. Mar. 1, 2019) (finding tortious interference claim subject to forum selection clause because it involved the same operative facts); *Taboola, Inc. v. Ezoic Inc*., 17 Civ. 9909, 2019 WL 465003, at *8 (S.D.N.Y. Feb. 6, 2019) (finding tortious interference claim subject to forum selection clause because whether the defendants breached the contract involved "determining the same facts at issue in the tortious interference claim"); *Laspata DeCaro Studio Corp. v. Rimowa GmbH*, 16 Civ. 934 (LGS), 2017 WL 1906863, at *5 (S.D.N.Y. May 8, 2017) (finding non-contract cross-claims subject to a forum selection clause because they arise from the "same allegations" as the contract claims, including the representations in the agreement and "failure to abide by those representations").

Moreover, contrary to the Singapore Rig Owners' contention, the "interpretation" and "enforcement" of the Bareboat Charters are directly relevant to the non-contractual claims. In particular, the Complaint in its entirety relates to Perforadora's rights to possess the Rigs and resolution of whether the Singapore Rig Owners unlawfully hindered those rights (for example, by colluding with other defendants and Pemex to terminate the Oro Negro Contracts) directly relates to the enforcement of the following provisions: (1) possession, which says Perforadora has sole and exclusive possession of the Rigs during the Charter Period, and the Singapore Rig Owners do not have any right to disturb that possession (Compl. ¶ 127); and (2) the Charter

Period, which says the Charter is valid from "the commencement of the [Pemex Contract]" to the "termination/expiry of the [Pemex Contract]" (*id.* ¶ 126), and which Plaintiffs contend remains in effect and enforceable because Pemex to date has never validly terminated any of the Oro Negro Contracts and has not allowed Perforadora to perform under the Charters.

C. This Court Has General Jurisdiction Over Seadrill Because It Has Continuous And Systematic Contacts With The United States

Plaintiffs have alleged facts detailing contacts between Seadrill and the United States—the totality of which demonstrate "continuous and systematic" contacts such that it (1) is "essentially at home" in the United States; and (2) could have reasonably expected to be haled into court in the United States. Seadrill relies (Br. 44-45) on the idea that there is no general jurisdiction because it is not incorporated in and does not have its principal place of business in the United States. However, this is not the exclusive test for assessing general jurisdiction. *See, e.g., Daimler*, 571 U.S. at 139 n. 19 (recognizing that, in an exceptional case, a foreign corporation could be found at "home" in a forum other than its formal place of incorporation or principal place of business).

For instance, in *Alfandary*, the court found that the defendant—a wholly foreign entity incorporated and with its principal place of business in Japan—was subject to general jurisdiction in New York based on the following pleaded facts: (1) the defendant had a U.S. subsidiary with a principal place of business in New York; (2) the defendant was registered as an investment advisor with the SEC; (3) as part of its SEC registration, the defendant filed a Form ADV, Form 13F reports and Form PF reports; (4) the defendant provided investment advisory services in the United States through its U.S. subsidiary; (5) two members of the defendant's board of directors also sat on the board of the U.S. subsidiary; (6) senior executives of the defendant traveled to the United States, including to discuss an executive compensation plan

with employees of the subsidiary; and (7) the defendant sent grants of stock to employees in the United States. 337 F. Supp. at 361. Citing *Daimler*, *Alfandary* determined that these facts, taken together, established that the defendant "may fairly be considered 'at home'" in the United States. *Id.*; *see also Wiwa v. Royal Dutch Petroleum Co*., 226 F.3d 88, 93, 97 (2d Cir. 2000) (finding general jurisdiction over two foreign corporations based on the alleged facts that they (1) filed reports with the SEC and employed transfer agents and depositories for their NYSE-registered shares; (2) maintained an internet website accessible in New York; (3) maintained a New York-based investor relations office, which they used to "invest substantial sums of money in cultivating their relationship with the New York capital markets"; (4) participated in at least one lawsuit in New York without contesting jurisdiction; and (5) retained New York-based counsel).

As in *Alfandary*, Plaintiffs have similarly alleged a number of facts demonstrating the multitude of contacts between Seadrill and the United States that, together, compel a conclusion that it "may fairly be considered 'at home'" in the United States: (1) Seadrill is traded on the NYSE (under the symbol "SDRL");[39] (2) Seadrill has two U.S. subsidiaries incorporated and with principal places of business in the United States—Seadrill Americas, Inc. and Sevan Drilling Ltd.—through which it conducts significant business in the United States; (3) two members of Seadrill's board of directors reside in New York; (4) Leand, a former member of the Seadrill board of directors from 2013 to August 2018, resides in New York; and (5) Seadrill

[39] Foreign Defendants' argument (Br. 7) that trading on, managing funds traded on, or owning shares of companies that are listed on the NYSE does not constitute sufficient contact with the United States to confer personal jurisdiction is misplaced. They rely on *Wiwa*, which recognized that foreign corporations could list their securities on a New York-based stock exchange without necessarily subjecting themselves to general jurisdiction in New York. 226 F.3d at 97. Crucially, however, the court clarified that stock exchange-related contacts still "count" toward the overall general jurisdictional analysis and ultimately found general jurisdiction over the foreign defendants. *Id.*

commenced the Seadrill Restructuring (i.e., a Chapter 11 Proceeding in the U.S. Bankruptcy Court in the Southern District of Texas (Victoria Division)) in September 2017. Compl. ¶ 74.[40]

Indeed, in filings accompanying the Chapter 11 petition—where Seadrill and 85 of its subsidiaries are seeking relief under U.S. bankruptcy law—Seadrill unequivocally and resoundingly declared its extensive presence in and contacts with the United States, as follows:[41]

> Seadrill Limited and 85 of its direct and indirect subsidiaries are Debtors in these chapter 11 cases. **Each Debtor** entity has assets, property, or other interests located in the United States by among other things: (a) owning **equity interests** in **United States-incorporated entities**; (b) owning a **bank account** with a positive cash balance at a **United States-based financial institution**; (c) maintaining certain residual interests, including in retainer **amounts paid to United States-based professionals**; (d) being party to **contracts governed by law in the United States**, including the Restructuring Support Agreement and the Investment Agreement (each of which is governed by New York law); and (e) owning certain other **assets, property, or interests located in the United States**. The Debtor entity Seadrill Americas, Inc., a 100 percent-owned subsidiary of Seadrill Limited, leases office space, maintains a significant employee base, and **owns substantial assets in Houston, Texas that collectively serve as the headquarters of Seadrill's North American operations**.

(emphases added).

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[40] The cases Defendants rely upon are inapposite, as they concern only one or two isolated contacts with the forum in an attempt to establish general jurisdiction. *See, e.g.*, *Sonera Holding B.V. v. Cukorova Holding A.S.*, 750 F.3d 221, 223-24, 226 (2d Cir. 2014) (finding no general jurisdiction where the defendant's only direct contact with the forum was an unsuccessful negotiation, which occurred outside the United States, to sell a portion of a business to two New York-based private equity funds and the sale of American Depository Shares in an affiliate to a London underwriter who subsequently offered the shares on the New York Stock Exchange); *Doe v. Nat'l Conference of Bar Examiners*, 1:16-CV-264 (PKC), 2017 WL 74715, at *6 (E.D.N.Y. Jan. 6, 2017) (finding no general jurisdiction where the defendant's contacts with the forum were that it develops and administers bar exams used in New York and a former member of the board of directors lives in New York); *Stormhale, Inc. v. Baidu.com*, 675 F. Supp. 2d 373, 375-76 (S.D.N.Y. 2009) (finding no general jurisdiction where the defendant's only contact with the forum was its listing on NASDAQ).

[41] Morillo Decl. Ex. 8 (Declaration of Mark Morris, Chief Financial Officer of Seadrill Limited, In Support of Chapter 11 Petitions and First Day Motions at 17, *In re: Seadrill Limited, et al.*, No. 17-60079 (Bankr. S.D. Tex. Sept. 12, 2017).)

It is untenable for Seadrill to seek relief from and represent to one U.S. court (whose protection it seeks as part of its restructuring) that it has significant contacts in the United States, while simultaneously maintain in another U.S. court (from whose jurisdiction it seeks to escape) that it does not have any minimum contacts with the United States. *See In re Bozel S.A.*, 434 B.R. 86, 99-100 (Bankr. S.D.N.Y. 2010) (finding it "unreasonable for [defendant] to believe that he could regularly conduct business in the United States and seek the protection of its laws and courts, and at the same time believe he could escape the jurisdictional reach of the United States' courts").[42]

Furthermore, Seadrill errs in arguing (Br. 46-47) that its initiation of and participation in the Chapter 11 proceeding—which remains ongoing—should be disregarded. Courts frequently look to participation in other proceedings in deciding general jurisdiction. *See, e.g.*, *Wiwa*, 226 F.3d at 97 (citing foreign corporations' participation in at least one lawsuit in New York where they did not contest jurisdiction as a factor weighing in favor of a finding of general jurisdiction); *In re Bozel S.A.*, 434 B.R. at 98, 100 (finding general jurisdiction over foreign defendant who signed and filed a Chapter 11 petition in New York and appeared in multiple hearings in the proceeding). Indeed, that Seadrill made specific affirmative representations about its extensive contacts with the United States in the Chapter 11 proceeding betrays its intentions in asserting that this Court should not examine the proceeding as part of a general jurisdiction analysis.

D. Exercising Personal Jurisdiction Over the Moving Defendants Would Not Offend Traditional Notions of Fair Play and Substantial Justice

The Moving Defendants make summary assertions that it would be unfair for them to be subject to this Court's jurisdiction, even assuming the existence of minimum contacts with the

[42] Seadrill attempts (Br. 24) to distinguish *In re Bozel S.A.* by stating the decision "pre-dated *Daimler*" and that the defendant in that case had other contacts with the forum, but *Daimler* did not purport to make other litigation in the forum irrelevant and there are likewise other contacts with the United States here.

United States. While a defendant's minimum contacts with a forum "may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice,'" *Burger King*, 471 U.S. at 476 (citation omitted), such dismissals "should be few and far between," *Metropolitan Life Ins. v. Robertson-Ceco Corp.*, 84 F.3d 560, 575 (2d Cir. 1996). This case does not belong in the category of rare dismissals, as Moving Defendants have not met their burden in establishing a "compelling showing" that exercising jurisdiction over them would be unreasonable. *See Eades v. Kennedy, PC Law Offices*, 799 F.3d 161, 169 (2d. Cir. 2015) (citation omitted) (the burden is on the defendant to "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable"); *In re Propranolol Antitrust Litig.*, 249 F. Supp. 3d 712, 731 (S.D.N.Y. Apr. 6, 2017) ("The burden is on the defendant to demonstrate that the assertion of jurisdiction in the forum will 'make litigation so gravely difficult and inconvenient that [it] unfairly is at a severe disadvantage in comparison to [its] opponent.'") (quoting *Burger King*, 471 U.S. at 478).

In particular, courts consider a number of factors to determine whether a defendant has made such a "compelling case," including: "(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief," *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 164 (2d Cir. 2010); and (4) whether the exercise of jurisdiction over the defendant would threaten "international rapport." *Daimler*, 571 U.S. at 141. The Moving Defendants fall far short of making a "compelling case" under *any* of these factors.

First, exercising jurisdiction over the entity defendants—ARCM, CQS, GHL, SFIL and Seadrill—will impose only a minimal burden. This is because these defendants *themselves*

maintain domestic offices, subsidiaries, or agents in the United States, market and conduct their business in the United States, and/or already have experience in litigating claims in the United States. As to the entities that do not already have some type of presence in the United States (including through their subsidiaries), as the Second Circuit has repeatedly recognized, "'the conveniences of modern communication and transportation ease' any burden the defense of this case in New York might impose." *See Licci*, 732 F.3d at 174; *In re Propranolol*, 249 F. Supp. 3d at 731 (finding the exercise of jurisdiction reasonable where "defendants have global bases of operations, maintain distribution networks throughout the United States, and have retained New York counsel"). And Moving Defendants identify no concrete difficulty with litigation in this forum.

Second, as discussed *supra* Section II.C.2, the United States has a very strong interest in adjudicating the case. And it is far from unreasonable to do so given Moving Defendants' choice to engage in a conspiracy directed from the United States.

Third, also as discussed *supra* Section II.C.1, Plaintiffs' interest in obtaining efficient and effective relief is best served by adjudicating this case in the United States. (*See also supra* Section II (discussing arguments against dismissal based on *forum non conveniens*).) And while Moving Defendants contend that México would be a preferable forum, few of them actually reside in México and, notably, they have not consented to jurisdiction there.

Fourth, there is no threat to international rapport from having the litigation in the United States. Moving Defendants do not contest this point, aside from referencing the argument on the act of state doctrine, which is erroneous for the reasons stated *infra* at Section III.B.

E. In the Alternative, Plaintiffs Move for Jurisdictional Discovery

For all the reasons set forth herein, Plaintiffs have made a prima facie showing for personal jurisdiction. However, should this Court conclude that it is a close question as to some

or all of the Moving Defendants, Plaintiffs request the right to move in the alternative for jurisdictional discovery.

"It is well settled under Second Circuit law that, even where a plaintiff has not made a prima facie showing of personal jurisdiction, a court may still order discovery, in its discretion, when it concludes that the plaintiff may be able to establish jurisdiction if given the opportunity to develop a full factual record." *Leon v. Shmukler*, 992 F. Supp. 2d 179, 194 (E.D.N.Y. 2014); *see also In re Magnetic Audiotape Antitrust Litig.*, 334 F.3d 204, 208 (2d Cir. 2003) ("At the very least, then, plaintiffs are entitled to further development on this point prior to a conclusion that they have failed to make a prima facie showing that [the defendant] participated directly in a conspiracy, the effects of which were purposefully directed at the United States."); *see also Ikeda v. J Sisters 57, Inc.*, No. 14–cv–3570 (ER), 2015 WL 4096255, at *9 (S.D.N.Y. July 6, 2015) (recognizing same). In particular, Plaintiffs are entitled to jurisdictional discovery "when the allegations are sufficient to articulate a colorable basis for personal jurisdiction, which could be established with further development of the factual record." *Leon*, 992 F. Supp. 2d at 195; *see also Ayyash v. Bank Al-Madina*, No. 04 Civ. 9201(GEL), 2006 WL 587342, at *5 (S.D.N.Y. Mar. 9, 2006) (quotations omitted) ("Such discovery has typically been authorized where the plaintiff has made a threshold showing that there is some basis for the assertion of jurisdiction.").[43]

Here, given the allegations discussed above linking all Defendants with a conspiracy directed from New York, there is at least a threshold showing that warrants further discovery.

[43] *See also, e.g.*, *New York v. Mountain Tobacco Co.*, 55 F. Supp. 3d 301, 314 (E.D.N.Y. 2014) (granting jurisdictional discovery where plaintiffs had made a "sufficient start" of establishing personal jurisdiction); *Pension Comm. of the Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, No. 05 Civ. 9016 (SAS), 2006 WL 708470, at *6 (S.D.N.Y. Mar. 20, 2006) (permitting jurisdictional discovery where defendants' declarations created factual dispute concerning the exercise of personal jurisdiction).

And while Plaintiffs have received some discovery in this proceeding, they did not previously know which Defendants would object to jurisdiction and thus have not received targeted discovery from Moving Defendants as to their contacts in the United States.

III. THE ACT OF STATE DOCTRINE DOES NOT BAR PLAINTIFFS' CLAIMS

"The act of state doctrine is a judicially created exception to the rule that courts of the United States will decide cases before them where their jurisdiction has been properly invoked." *Banco Nacional de Cuba v. Chem. Bank New York Tr. Co.*, 594 F. Supp. 1553, 1557 (S.D.N.Y. 1984). This exception is narrowly limited, and "should not, the Supreme Court instructs, be casually expanded 'into new and uncharted fields.'" *Kashef v. BNP Paribas S.A.*, 925 F.3d 53, 58 (2d Cir. 2019) (quoting *W.S. Kirkpatrick & Co. v. Envtl. Tectonics Corp., Int'l*, 493 U.S. 400, 409 (1990)). "[T]he burden of proof rests on defendants to justify application of the act of state doctrine." *Bigio v. Coca-Cola Co*., 239 F.3d 440, 453 (2d Cir. 2000). Defendants do not even come close to meeting that burden.

A. The Threshold Conditions For The Act Of State Doctrine Are Not Present

The act of state "doctrine applies only when 'the relief sought or the defense [raised] would have *required* a court in the United States to declare invalid the official act of a foreign sovereign performed within its own territory.'" *Id.* at 59 (emphasis in original) (quoting *Kirkpatrick*, 493 U.S. at 405). Defendants fail to meet these requirements.

1. The Mexican Courts Have Declared That There Is No Official Act Of A Foreign Sovereign At Issue Here

Defendants carry "the burden of establishing the act *and its character as an act of state*." *Galu v. Swissair: Swiss Air Transp. Co.*, 873 F.2d 650, 654, n.4 (2d Cir. 1989) (emphasis in original) (citing *Restatement (Third) of the Foreign Relations Law of the United States* § 443 comment i (1986)). To begin with, Defendants err in suggesting (Ad-Hoc Br. 44) that the act of

state doctrine applies simply because Pemex is a state-owned entity. "[T]he identity of the actor alone . . . is not determinative of whether the act was official or public." *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2010 WL 10947344, at *32 (E.D.N.Y. Sept. 22, 2010).

Defendants failed to meet their burden in establishing the elements necessary for the application of the doctrine to the terminations. To apply the act of state doctrine, the act in question "must be imbued with some level of formality, such as authorization by the foreign sovereign through an official statute, decree, order, or resolution." *Kashef*, 925 F.3d at 60-61 (quotations and citations omitted); *see also McKesson Corp. v. Islamic Republic of Iran*, 672 F.3d 1066, 1073-74 (D.C. Cir. 2012) (declining to apply act of state doctrine, even in suit against foreign sovereign, because "Iran did not pass a law, issue an edict or decree, or engage in formal governmental action explicitly taking McKesson's property for the benefit of the Iranian public"). Defendants argue (Ad-Hoc Br. 41) that the act of state doctrine bars "twelve of the seventeen causes of action" that "turn on Pemex's decisions and actions regarding the Pemex Contracts." But Defendants "point to no statute, decree, order, resolution, or comparable evidence of sovereign authorization for any of the actions in question." *Kashef*, 925 F.3d at 60-61.

Furthermore, a Mexican court has declared that the terminations lack a sovereign character, which is required for application of the act of state doctrine. As the D.C. Circuit explained, the act of state doctrine applies only to "conduct that is by nature distinctly sovereign, *i.e.,* conduct that *cannot be undertaken* by a private individual or entity." *McKesson*, 672 F.3d at 1073 (emphasis added); *see also, e.g.*, *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MDL-1775 JG VVP, 2010 WL 10947344, at *32 (E.D.N.Y. Sept. 22, 2010) (emphasis added) (holding that even if certain "actions constitute governmental *acts* in the strict sense, inasmuch as

it is an instrumentality of the [foreign] government, they" do not constitute sovereign acts for the act of state doctrine unless they are "of a governmental *character*") (emphasis in original). Indeed, acts of a foreign government in the commercial realm are routinely held outside the purview of the act of state doctrine. *See, e.g.*, *de Csepel v. Republic of Hungary*, 714 F.3d 591, 604 (D.C. Cir. 2013). While the Ad-Hoc Defendants note (Br. 47 n.39) that the Second Circuit has not decided on the existence of a commercial activity exception, numerous lower courts in this circuit have recognized that a sovereign state does not take an official action when it acts in the commercial context because such actions are not "executed by the sovereign acting as a government." *Fed. Treasury Enter. Sojuzpolodoimport, OAO v. Spirits Int'l B.V.*, 809 F.3d 737, 744 (2d Cir. 2016); *see also In re Air Cargo Shipping Servs. Antitrust Litig.*, 2010 WL 10947344, at *32 (E.D.N.Y. Sept. 22, 2010) (finding "no case applying the act of state doctrine to purely commercial conduct on the part of a foreign sovereign," and holding that "to speak of a 'commercial exception' is somewhat misleading, because it appears doubtful that purely commercial behavior was ever covered by it in the first place"); *In re Nakash*, 190 B.R. 763, 769 (Bankr. S.D.N.Y. 1996) ("Because the Receiver . . . acted in a commercial capacity, as he did on other occasions in relation to this Debtor, he should not be afforded the blind eye which the Act of State Doctrine affords*."); Lyondell-Citgo Ref., LP v. Petroleos de Venezuela, S.A.*, No. 02 CIV. 0795 (CBM), 2003 WL 21878798, at *9 (S.D.N.Y. Aug. 8, 2003) (declining to apply act of state doctrine to transactions defined "as commercial, not governmental").

Here, the act of Pemex relied upon by Defendants (Ad-Hoc Br. 44-47) is the termination of contracts, and the same Mexican court that ruled on the invalidity of the Pemex terminations held that the contracts were "private" and "of a commercial nature." *See* Ch. 15 ECF 181, Ex. B. The Mexican court's ruling on this issue is dispositive for purposes of the act of state doctrine.

The entire purpose of the act of state doctrine is to protect the foreign state from improper interference with its purely sovereign acts. But where the foreign state—through its own courts—disclaims the idea that it is acting in a sovereign (rather than a commercial) capacity, there is no plausible basis for application of the doctrine. That is especially true here because México and Pemex have not come forward to support any act of state defense. Thus, Defendants cannot defend as an act of state what México itself has stated is not an act of state in the first place. Indeed, Plaintiffs *recognize the effect* of the relevant official act of the Mexican government: the Mexican court's ruling that Pemex breached the Oro Negro Contracts by unlawfully purporting to terminate them. Compl. ¶ 220.

2. The Relief Sought Does Not Require This Court To Declare Invalid Any Foreign Sovereign's Official Act

Even if there were a qualifying foreign sovereign's official act here, Plaintiffs' claims do not require this Court to invalidate any such official act, as required for application of the doctrine. *Kirkpatrick*, 493 U.S. at 405 ("In every case in which we have held the act of state doctrine applicable, the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign . . . ."). Because Plaintiffs do not seek that this Court issue any declaration or relief in regards to the validity or enforceability of any decision by Pemex or any other Mexican agency, the act of state doctrine is inapplicable. An order requiring Defendants to compensate Plaintiffs for their injury, the sole relief Plaintiffs' request in this case, does not require this Court to invalidate either the termination of the Pemex Contracts or the Mexican criminal investigations. This case thus is on all fours with *Kirkpatrick*, where the Supreme Court denied the availability of the act of state defense to a suit brought by an unsuccessful bidder in a contract with the Nigerian government against the successful bidder, alleging the successful bid was obtained through bribery. *Id.* at

402. And the government contracts concerned construction at to a Nigerian Air Force Base, *id.* at 401, an area well within the sovereign authority of a foreign state. But the Supreme Court concluded: "Regardless of what the court's factual findings may suggest as to the legality of the Nigerian contract, its legality is simply not a question to be decided in the present suit, and there is thus no occasion to apply the rule of decision that the act of state doctrine requires." *Id.* at 406. Likewise, here, regardless of what Plaintiffs' claims may indirectly suggest as to Pemex's conduct, the validity of its conduct is not the subject of this suit. *See also, e.g.*, *Alpha Lyracom Space Commc'ns, Inc. v. Commc'ns Satellite Corp.*, 1993 WL 97313, at *7 (S.D.N.Y. Mar. 30, 1993) ("The only issue before this Court is whether [defendant] has violated [U.S.] law. That [defendant] may have conspired with foreign companies owned by foreign governments is irrelevant to the Act of State Doctrine.").

More generally, the act of state doctrine is unavailable where plaintiffs only seek monetary damages from non-state actors. If Plaintiffs prevail on their claims here, the result is that they will receive money from Defendants. There is no sense in which receiving money from Defendants invalidates acts of Pemex, and thus the act of state doctrine is inapplicable. *See Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1048 (9th Cir. 1983) (rejecting act of state defense where plaintiff "did not seek to name any foreign nation or officer as a defendant and did not directly challenge the foreign nation's conduct in a way that would threaten relations with the country"); *WMW Mach., Inc. v. Werkzeugmaschinenhandel GmbH IM Aufbau*, 960 F. Supp. 734, 745 n.8 (S.D.N.Y. 1997) ("The remedies available to plaintiffs, if ultimately successful in this action, would be the award of damages and would not require the [defendants]

to violate any laws abolishing the GDR's monopoly over the exports or mandating the privatization of the machine tool industry.").[44]

Furthermore, the validity of Pemex's conduct need not be even indirectly decided here. No claim has an element that requires underlying unlawful conduct from Pemex. *See infra* at V (discussing elements of the claims). Rather, even assuming everything that Pemex did was legally valid, Plaintiffs still have claims against Defendants for their own unlawful acts. *See Sharon v. Time, Inc.*, 599 F. Supp. 538, 547 (S.D.N.Y. 1984) (rejecting application of act of state doctrine where "if the alleged acts of state were assumed to be valid, no remedy for the plaintiff, or defense by the defendant, would be precluded"); *see also Northrop*, 705 F.2d at 1049, n.26 ("[M]ere governmental approval or foreign governmental involvement which the defendants had arranged does not provide a defense.") (citation and quotations omitted). And to the extent that Pemex's conduct may be relevant to some claims, it would be premature on the pleadings to decide that the nature of that relevance is so great that the act of state doctrine applies (even putting aside all of the other reasons why the act of state doctrine is inapplicable here). *See infra* at III.

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[44] In contrast, all of the cases Defendants cite (Ad-Hoc Br. 45-52) concern claims against foreign government entities that threatened to find their conduct invalid. *See World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154, 1165 (D.C. Cir. 2002) (plaintiff's claim "require[d] [the D.C. Circuit] to question the 'legality' of [defendant] Kazakhstan's denial of the export license"); *Sea Breeze Salt, Inc. v. Mitsubishi Corp.*, 899 F.3d 1064, 1072 (9th Cir. 2018) (all of plaintiff's claims against the defendant state-owned entity, ESSA, "seek[] the same relief—invalidation of ESSA's exclusivity arrangement with Mitsubishi"); *Spectrum Stores, Inc. v. Citgo Petroleum Corp.*, 632 F.3d 938, 953-955 (5th Cir. 2011) ("The government's brief underscores that the damaging consequences of this litigation are likely to include immediate disruption of oil imports into the United States … and the frustration of other national priorities," and "the granting of any relief would in effect amount to an order from a domestic court instructing a foreign sovereign to alter its chosen means of allocating and profiting from its own valuable natural resources."); *Int'l Ass'n of Machinists & Aerospace Workers, (IAM) v. Org. of Petroleum Exporting Countries (OPEC)*, 649 F.2d 1354, 1355 (9th Cir. 1981) (plaintiff directly sued a cartel of sovereign nations, charging them with violating U.S. antitrust laws, and sought to enjoin and recover damages from the sovereign nations); *Du Daobin v. Cisco Sys., Inc.*, 2 F. Supp. 3d 717, 726 (D. Md. 2014) ("Adjudication of these claims would require judging official actions of the Chinese government and its officials in enforcing Chinese law against Chinese citizens in China.").

The Ad-Hoc Defendants argue (Br. 50-52) that Plaintiffs' abuse of process claims necessarily implicate the act of state doctrine because they concern México's "police power." However, claims alleging abuse of foreign process do not require "a ruling regarding the validity . . . of [that foreign] process" but "merely require[] the Court to consider whether the process was unlawfully used by non-governmental parties . . . in order to extort money and other concessions from Defendant" *Dubai World Corp. v. Jaubert*, 2010 WL 11504310, at *3 (S.D. Fla. July 9, 2010); *see also Garcia v. Lion México Consol. L.P.*, 2018 WL 6427350, at *5 (W.D. Tex. Sept. 14, 2018) (rejecting act of state defense to suit alleging bribery of Mexican officials led to improper arrest of plaintiffs because "the Court need not find the purported acts to be invalid to find that a bribe occurred . . . . only the motive for, not the validity of, foreign sovereign acts is at issue"). The lone case Defendants cite, *Nocula v. UGS Corp.*, 520 F.3d 719 (7th Cir. 2008), "is clearly distinguishable" on this basis, *Dubai World*, 2010 WL 11504310, at *3, because *Nocula* concerned a challenge to the seizure of property by the Polish police pursuant to a Polish criminal prosecution, *see* 520 F.3d at 728. If Defendants' interpretation of the act of state doctrine were correct, plaintiffs could never bring an abuse of process claim concerning actions by a foreign state. But the Second Circuit has recognized abuse of process claims involving foreign legal proceedings. *See Weiss v. Hunna*, 312 F.2d 711 (2d Cir. 1963) (reversing dismissal of abuse of process claim concerning Austrian legal proceeding).

Indeed, there is no element of abuse of process that requires invalidity of the foreign state conduct in that process. Rather, under New York law, an abuse of process claim presumes the legitimacy of the underlying process. *See Cook v. Sheldon*, 41 F.3d 73, 80 (2d Cir. 1994) ("In New York, a malicious abuse of process claim lies against a defendant who [] employs regularly issued legal process to compel performance or forbearance of some act."). It is only the use of

that process by Defendants "in order to obtain a collateral objective that is outside the legitimate ends of the process" that gives rise to Plaintiffs' tort claim. *Id.* Accordingly, the resolution of Plaintiffs' abuse of process claim does not require the invalidation of any Mexican investigation (assuming arguendo such investigations constitute official acts), but merely the determination from this Court that Defendants improperly initiated those investigations for illicit ends. And because this Court need not invalidate those investigations to grant the monetary relief sought, the act of state defense does not apply. *See Kirkpatrick*, 493 U.S. at 407 (act of state doctrine not applicable where plaintiff "was not trying to undo or disregard the governmental action, *but only to obtain damages from private parties who had procured it*") (emphasis added); s*ee United States v. Portrait of Wally*, 663 F. Supp. 2d 232, 248 (S.D.N.Y. 2009) (rejecting act of state defense because "the Court is not being asked to *invalidate* any action by an Austrian governmental authority, but only to determine the effect of such action, if any . . .") (emphasis in original); *see also In re Yukos Oil Co. Sec. Litig.*, 2006 WL 3026024, at *7 (S.D.N.Y. Oct. 25, 2006) ("The act of state doctrine does not preclude a court from deciding a case that implicates the motives or justifications of a foreign sovereign's official act but does not seek to invalidate or circumvent that act."). Plaintiffs' action is readily distinguishable from *Nnaka v. Fed. Republic of Nigeria*, 756 F. App'x 16, 18 (D.C. Cir. 2019), in which the plaintiff directly sued the Nigerian government to recover for a purportedly unlawful criminal investigation.

Finally, even if this Court were required to invalidate an official act of México, whether the improper investigation into Plaintiffs or the termination of the Oro Negro Contracts, the act of state doctrine would still not justify dismissal because "acts that flagrantly violate a foreign state's own laws cannot, at the same time, constitute official acts entitled to deference." *Kashef*, 925 F.3d at 61. Here, a Mexican trial court has ruled that Pemex breached the Oro Negro

Contracts by unlawfully terminating them, Compl. ¶ 220, and Plaintiffs allege there existed no factual or legal basis for the Mexican investigations and that they are based on evidence fabricated by or knowingly used by Defendants, *id.* ¶¶ 306-310. Accordingly, the act of state doctrine is unavailable. *See In re Air Cargo Shipping Servs. Antitrust Litig.*, 2010 WL 10947344, at *33 (E.D.N.Y. Sept. 22, 2010) (Conduct "in violation of the law of that [foreign] state [] is not the kind of conduct that should receive the protection of the act of state doctrine."). In *Konowaloff v. Metro. Museum of Art*, 702 F.3d 140, 148 (2d Cir. 2012), which the Ad-Hoc Defendants cite (Br. 47 n.40) for the proposition that the act of state doctrine applies even where "the complaint alleges a violation of the foreign state's own domestic laws," the foreign state had "not repudiated the 1918 appropriation that is the government act that deprived [plaintiff] of any right to the [p]ainting." 702 F.3d at 148. But here, a trial court has ruled that Pemex breached the Contracts by unlawfully terminating them. Compl. ¶ 220.

B. There Are No Comity Or Foreign Policy Concerns That Allow For Application Of The Act Of State Doctrine Here

Even if Defendants demonstrate the threshold conditions for application of the act of state doctrine are present here (they cannot), they still cannot establish that "the policies underlying the act of state doctrine . . . justify its application." *Kirkpatrick*, 493 U.S. at 409 ("[T]he policies underlying the act of state doctrine should be considered in deciding whether, despite the doctrine's technical availability, it should nonetheless not be invoked."). *See also United States v. One Etched Ivory Tusk of African Elephant*, 871 F. Supp. 2d 128, 142 (E.D.N.Y. 2012) ("[A] court must balance the interests involved and ask itself whether the policies that underlie the doctrine justify the application in the particular case. This requires a case-by-case analysis of whether separation-of-power concerns are implicated.").

The Supreme Court has articulated two policies underpinning the doctrine: (1) "the highest considerations of international comity and expediency," *Oetjen v. Central Leather Co.*, 246 U.S. 297, 303-04 (1918); and (2) "domestic separation of powers, reflecting 'the strong stance of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder' the conduct of foreign affairs," *Kirkpatrick*, 493 U.S. at 404 (citing *Banco Nacional de Cuba v. Sabbatino,* 376 U.S. 398, 423 (1964)). And it is only in "extraordinary circumstances" that either of these policy considerations will justify application of the act of state doctrine. *European Cmty. v. RJR Nabisco, Inc.*, 150 F. Supp. 2d 456, 473 n.13 (E.D.N.Y. 2001) ("Absent such extraordinary circumstances, [] courts in the United States have . . . the obligation [] to decide cases and controversies properly presented to them, even when the outcome of the case turns upon the effect of a foreign sovereign's acts taken within its own territory."). Similarly, the Second Circuit has held that the act of state doctrine applies only if "resolution of th[e] case" will "likely impact on international relations or embarrass or hinder the executive in the realm of foreign relations." *Bigio v. Coca-Cola Co.*, 239 F.3d 440, 452-53 (2d Cir. 2000) (citation omitted) (reversing district court's application of act of state doctrine where court could not "see how any decision that the district court might make would offend the government of Egypt or interfere with the relationship between Egypt and the United States"). Neither of the policy considerations outlined by the Supreme Court justifies invocation of the act of state doctrine here.

Defendants' only argument as to comity and foreign relations are two conclusory sentences (Ad-Hoc Br. 52-53) that "México continues to fight Oro Negro's claims that it breached the Pemex Contracts and has continued to prosecute the criminal actions." However, Defendants fail to explain how the claims in this case create any international conflict with those

foreign actions. In particular, Plaintiffs do not request relief that binds the state of México or any entities controlled by México; instead, Plaintiffs merely seek monetary damages from Defendants for the losses they have suffered as a result of the conduct of non-State entities, many of them operating in New York or elsewhere in the United States. *See Rasoulzadeh v. Associated Press*, 574 F. Supp. 854, 860 (S.D.N.Y. 1983), *aff'd*, 767 F.2d 908 (2d Cir. 1985) ("The executive branch has no interest in a tort claim by Iranian citizens against an American corporation arising out of the latter's breach of a lease agreement, the use of plaintiffs' Iranian property by Canadians, and the subsequent confiscation of the property by Iran."). As such, Defendants do not even attempt to explain how "this case will upset or adversely impact relations between [México] and the United States, and relatedly, there is little risk of trodding improperly on the turf of the Executive of Congress in the management of foreign relations." *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2010 WL 10947344, at *33 (E.D.N.Y. Sept. 22, 2010) ("Without some risk" thereof, "the concerns animating the act of state doctrine are . . . not implicated here."); *see also Attorney Gen. of Canada v. R.J. Reynolds Tobacco Holdings, Inc.,* 103 F. Supp. 2d 134, 144-45 (N.D.N.Y. 2000), *aff'd,* 268 F.3d 103 (2d Cir. 2001) ("[T]he Court discerns no policy reasons why a factual determination of these issues would hinder the conduct of foreign affairs—the primary reason behind the act of state doctrine."). [redacted]

[redacted] *See Villoldo v. Castro Ruz*, 821 F.3d 196, 203 (1st Cir. 2016) (explaining courts "are required to accord some deference to the executive's position concerning the application of the act of state doctrine").

C. The Act Of State Doctrine Should Not Be Applied At The Pleading Stage

Finally, even assuming *arguendo* the defense had any merit, it would be premature to apply the act of state doctrine here. "As a substantive rather than a jurisdictional defense, the Act of State doctrine is more appropriately raised in a motion for summary judgment than in a motion to dismiss." *Daventree Ltd. v. Republic of Azerbaijan*, 349 F. Supp. 2d 736, 755 (S.D.N.Y. 2004), *opinion clarified on denial of reconsideration,* 2005 WL 2585227 (S.D.N.Y. Oct. 13, 2005). And this Court may only grant a motion to dismiss based on the act of state doctrine if it is "satisfied that there is no set of factors favorable to the plaintiffs and suggested by the complaint which could fail to establish the occurrence of an act of state." *MMA Consultants 1, Inc. v. Republic of Peru*, 245 F. Supp. 3d 486, 520 (S.D.N.Y.), *aff'd,* 719 F. App'x 47 (2d Cir. 2017) (citing *Daventree*, 349 F. Supp. 2d at 755); *see also Ramirez de Arellano v. Weinberger*, 745 P.2d 1500, 1534 (D.C. Cir. 1984) (same). Here, Defendants cannot show no conceivable set of facts avoid the act of state doctrine because the extent of the Mexican government's involvement, if any, in the action is disputed. *Compare, e.g.,* Compl. ¶¶ 340-41, 391 (alleging bribes to government) *with* Ad-Hoc Br. 21 (characterizing those allegations as "scurrilous" and "not supported"). Accordingly, this Court should not allow Defendants "to use the act of state doctrine as a shield at such an early stage of the proceedings." *Lyondell-Citgo Ref., LP v. Petroleos de Venezuela, S.A.*, 2003 WL 21878798, at *9 (S.D.N.Y. Aug. 8, 2003); *see also Associated Container Transp. (Australia) Ltd. v. United States*, 705 F.2d 53, 62 (2d Cir. 1983) (rejecting act of state defense where "it cannot be determined at this stage of the proceedings whether any court will ever be called upon to investigate the validity of actions taken by a foreign government").

IV. NEW YORK LAW GOVERNS PLAINTIFFS' TORT CLAIMS

"[B]ankruptcy courts confronting state law claims that do not implicate federal policy concerns should apply the choice of law rules of the forum state." *In re Gaston & Snow*, 243 F.3d 599, 601-02 (2d Cir. 2001). New York's choice of law rules thus control here. *See GlobalNet Financial.Com, Inc. v. Frank Crystal & Co.*, 449 F.3d 377, 382 (2d Cir. 2006). Under New York law, "the first step in any case presenting a potential choice of law issue is to determine whether there is an actual conflict between the laws of the jurisdictions involved." *In re Allstate Ins. Co., (Stolarz)*, 81 N.Y.2d 219, 223 (1993). Here, New York and Mexican law conflict in their treatment of Plaintiffs' tort claims. *See Curley v. AMR Corp.*, 153 F.3d 5, 15 (2d Cir. 1998) (concluding New York and Mexican tort law "are in actual conflict due to the differences between common law and civil law requirements for establishing tort liability"); Zamora Decl. ¶¶ 6-33.

Given the existence of an actual conflict, for Plaintiffs' tort claims, "[t]he law of the jurisdiction having the greatest interest in the litigation will be applied." *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 739 F.3d 45, 48 (2d Cir. 2013). Moreover, contrary to Defendants' approach (Ad-Hoc Br. 53-60), where all claims are analyzed together, this Court must assess *each claim* to determine whether New York or Mexican law governs. *Utts v. Bristol-Myers Squibb Co.*, 226 F. Supp. 3d 166, 176 (S.D.N.Y. 2016) ("Choice of law analysis is conducted on a claim-by-claim basis."). As the subsections below detail for each claim, Defendants' tortious conduct primarily occurred in New York and New York therefore has the

greatest interest in adjudicating the claims. At a minimum, there is sufficient New York conduct alleged that a choice of Mexican law cannot be resolved on the pleadings.[45]

A. The Place Where The Tortious Conduct Occurred Is Controlling

Under New York law, "the interest analysis is applied differently depending on whether the rules in question are conduct-regulating rules that people use as a guide to governing their primary conduct, or loss-allocating rules that prohibit, assign, or limit liability after the tort occurs." *Licci*, 739 F.3d at 49 (quotations and citation omitted). In this case, there is no dispute that the conflicting laws at issue, concerning the elements for the tort claims, are conduct-regulating; they prescribe "rules that people use as a guide to governing their primary conduct." *Id.*; *see also* Seadrill Br. 18 (acknowledging the tort laws are conduct-regulating); *First Hill Partners, LLC v. BlueCrest Capital Mgmt. Ltd.*, 52 F. Supp. 3d 625, 636 (S.D.N.Y. 2014) ("[T]ortious interference . . . is a conduct-regulating cause of action."); *SourceOne Dental, Inc. v. Patterson Companies, Inc.*, 310 F. Supp. 3d 346, 368 (E.D.N.Y. 2018) (civil conspiracy claims are conduct-regulating cause of action); *id.* (aiding and abetting claims concern conduct-regulating laws for New York choice of law analysis); *Deutsch v. Novartis Pharm. Corp.*, 723 F. Supp. 2d 521, 524 (E.D.N.Y. 2010) ("It is well-established in this Circuit that punitive damages are conduct-regulating issues.").

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[45] Although the Complaint contains sufficient allegations for this Court to determine that New York law applies because New York is the situs of Defendants' tortious behavior, further discovery would confirm New York's interest in the litigation, *see, e.g.*, Compl. ¶¶ 314, including by further detailing the extent to which Defendants' actions and conspiracy occurred in New York through: [redacted] Accordingly, this Court need not "make a choice of law determination at the motion to dismiss stage" because the facts here are not yet "sufficiently clear." *Holborn Corp. v. Sawgrass Mut. Ins. Co.*, 304 F. Supp. 3d 392, 398 (S.D.N.Y. 2018) (explaining courts "often decline to do so" because "a choice of law analysis is fact intensive").

Given that the conflict of law concerns conduct-regulating laws, the location of the tortious conduct is controlling. As the Second Circuit has explained, where "conduct-regulating laws are at issue, the law of the jurisdiction where the tort occurred will generally apply because that jurisdiction has the greatest interest in regulating behavior within its borders." *GlobalNet*, 449 F.3d at 384 (citing *Cooney v. Osgood Mach., Inc.*, 81 N.Y.2d 66, 72 (1993)). The location where the tort occurred is generally controlling even where the injury occurs elsewhere. "In the ordinary tort case, both the wrong and the injury take place in the same jurisdiction. . . . But where they do not, it is the place of the allegedly wrongful conduct that generally has superior interests." *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 672 F.3d 155, 158 (2d Cir. 2012) (quotation, citation and alteration omitted).

Defendants' argument on choice of law (Ad-Hoc Br. 55; Seadrill Br. 19) rests largely on the erroneous legal premise that the place of injury controlling. However, *Licci* expressly rejected the "view . . . that the law of the place of injury ordinarily or always governs where conduct-regulating rules are involved as inconsistent with the law as clearly established by New York's highest court in *Schultz* [*v. Boy Scouts of Am., Inc.*, 65 N.Y.2d 189, 197 (1985)]." *Id.* And it held that "[a]lthough the plaintiffs' injuries occurred in Israel, and Israel is also the plaintiffs' domicile, those factors do not govern where, as here, the conflict pertains to a conduct-regulating rule." *Id.* Numerous district court cases are in accord. *See Holburn*, 304 F. Supp. 3d at 399 (holding that this Court "must follow the decision in *Licci* and presume that the state with the greatest interest in this case is the state in which the alleged wrongful conduct occurred"); *Wultz v. Bank of China Ltd.*, 865 F. Supp. 2d 425, 429 (S.D.N.Y. 2012) ("[I]n this context, the location of the injury does not control; instead, it is the location of the defendant's conduct that controls."); *In re Hellas Telecommunications (Luxembourg) II SCA*, 535 B.R. 543, 574 (Bankr.

S.D.N.Y. 2015) ("[W]hen the allegedly wrongful conduct occurs in a place different from the place of injury, the Second Circuit dictates that it is the place of the allegedly wrongful conduct that generally has superior interests." (citation and quotation omitted)).

Defendants ignore *Licci*, and their only attempt (Seadrill Br. at 19 n.10) to address any of the case law discussed above is to distinguish *Holburn* because it "was not a tortious interference case." However, nothing in *Holburn* suggested the analysis was limited to the particular tort at issue. *Licci*'s broad holding also suggests no distinction between types of torts; the holding applies to *all* conduct-regulating rules. 739 F.3d at 48-51. And tortious interference is plainly a conduct-regulating law. *First Hill*, 52 F. Supp. 3d at 636. Thus, when faced with claims for tortious interference, or conspiracy to commit and aiding and abetting tortious interference, district courts correctly apply Second Circuit precedent and look to the location of the tortious conduct. *See SourceOne Dental*, 310 F. Supp. 3d at 368; *First Hill*, 52 F. Supp. 3d at 636.

The cases Defendants cite are not to the contrary. In some, the parties did not contest the choice of law analysis. *See 2002 Lawrence R. Buchalter Alaska Tr. v. Philadelphia Fin. Life Assur. Co.*, 96 F. Supp. 3d 182, 200 (S.D.N.Y. 2015); *Am. Lecithin Co. v. Rebmann*, 2017 WL 4402535, at *19 (S.D.N.Y. Sept. 30, 2017). In others, the court applied the law in which the tortious conduct occurred. *See Lyondell*, 534 B.R. at 450-51 (holding Texas law applied to aiding and abetting breach of fiduciary duties brought against defendants operating in Texas); *Silverman v. Rosewood Hotels & Resorts, Inc.*, 2004 WL 1823634, at *4 (S.D.N.Y. Aug. 16, 2004) (concluding "México's interest in seeing that its laws are applied to the conduct of the defendant within its borders is substantial"); *Arista Records, Inc. v. Mp3Board, Inc.*, 2002 WL 1997918, at *16 (S.D.N.Y. 2002) (applying California law to a claim for tortious interference where the tortious conduct occurred "in California"). And another pre-dates *Licci* and cites to

the summary of the traditional, loss-allocating rule in *Schultz*, *see Hidden Brook Air, Inc. v. Thabet Aviation Int'l Inc.*, 241 F. Supp. 2d 246, 277 (S.D.N.Y. 2002), which *Licci* held does not control for conduct-regulating laws, *see Licci*, 739 F.3d at 49.

The Ad-Hoc Defendants also err in relying (Br. 58) extensively on the decision to apply Mexican rather than New York law in *Norte v. Worldbusiness Capital, Inc.*, 2015 WL 7730980, at *12 (S.D.N.Y. Nov. 24, 2015), *aff'd sub nom. Maricultura Del Norte, S. de R.L. de C.V. v. Umami Sustainable Seafood, Inc.*, 769 F. App'x 44 (2d Cir. 2019). The plaintiffs in *Norte* did not allege "that *any* of the [defendants'] conduct took place in New York." *Id.* at *11 (emphasis added). Thus, in *Norte*, "[t]here is absolutely no argument in favor of applying New York law. Nothing whatever happened here that is relevant to this claim . . . . It is irrelevant that Defendants might have committed some tort *were they located in New York*." *Id.* (emphasis added). *Abogados v. AT&T, Inc.*, 223 F.3d 932 (9th Cir. 2000), is similarly inapposite. As in *Norte*, the plaintiff in *Abogados* arguing for the application of New York law "has not pointed to any activities that occurred in New York. Instead, he points to decisions made from offices in New Jersey and meetings that occurred in Atlanta." *Id.* at 936.

The only Second Circuit decision Defendants cite, *In re Thelen LLP*, 736 F.3d 213 (2d Cir. 2013), is inapposite because its reasoning is expressly limited to fraud claims. It recognized that "[i]f conflicting conduct-regulating laws are at issue, the law of the jurisdiction where the tort occurred will generally apply," but held that "*for claims based on fraud*, the locus of the tort is generally deemed to be the place where the injury was inflicted, rather than where the fraudulent act originated." *Id.* at 220 (emphasis added; quotations omitted). Plaintiffs do not allege fraud, and thus *Thelen*'s holding is irrelevant here. In addition, *Thelen* applied New York law in part because the Chapter 7 petitioner's principal place of business is New York and "the

location of the firm's principal place of business is certainly relevant in deciding the law applicable to actions taken in the course of that business." *Id.* Here, that analysis supports application of New York law [redacted] Compl. ¶¶ 24, 26, 169.[46]

B. New York Law Governs Plaintiffs' Tortious Interference And Conspiracy To Tortiously Interfere Claims Against The Ad-Hoc Group Defendants

New York has the greatest interest in, and therefore New York law controls, Plaintiffs' tortious interference and conspiracy claims against the Ad-Hoc Group Defendants. As discussed above, the jurisdiction in which the tortious conduct occurred has the strongest interest. Plaintiffs allege that the tortious interference and related conspiracy were conceived of and directed from New York, and thus New York law applies to those claims.

1. New York Law Governs Count One, Tortious Interference And Conspiracy To Tortiously Interfere With The Oro Negro Contracts

Defendants' conduct pertaining to their tortious interference and related conspiracy to tortiously interfere with the Oro Negro Contracts and seize the Rigs occurred in New York.

First, many of the principal Defendants that performed the tortious conduct are located in New York. In particular, [redacted] Compl. ¶ 274, operated out of New York, *id.* ¶¶ 24, 26. Where, as here, defendants face tort claims alleging misconduct arising from and through their business, the defendants' principal place of business will possess a strong interest in applying its own law to regulate the

[46] The Ad-Hoc Group Defendants also cite (Br. 54) *Schultz* for the proposition that New York courts first consider the place where the injury occurred. But as *Holborn* explained, that language from "*Schultz* is inapposite to application of the interest test for conduct-regulating tort laws." 304 F. Supp. 3d at 399. *See also Licci*, 739 F.3d at 50-51 (interpreting *Schultz* to emphasize the place of injury only with regards to choice of law analysis for loss-allocating laws).

conduct within its borders. *Thelen*, 736 F.3d at 220 ("[T]he location of the firm's principal place of business is certainly relevant in deciding the law applicable to actions taken in the course of that business."); *see also Hernandez v. Office of the Comm'r of Baseball*, 2019 WL 3034841, at *4 (S.D.N.Y. July 11, 2019) ("Defendants have a principal place of business in New York, a factor that gives New York a strong interest in the outcome of this suit." (citation omitted)); *Robins v. Max Mara, U.S.A., Inc.*, 923 F. Supp. 460, 465 (S.D.N.Y. 1996) (emphasizing the state of defendant's principal place of business as significant in the choice of law analysis concerning conduct during the course of defendant's business operations).

Second, the tortious interference and conspiracy [redacted]

While Defendants suggest (Ad-Hoc Br. 56) that the relevant conduct is the location where the termination of contracts or other interference occurred, that conduct is far less important for choice-of-law purposes than the location where the tortious conduct was originated and directed. In particular, courts repeatedly place the greatest weight on the location from which the tortious conduct was *directed*, even if the scheme was carried out elsewhere. As one

court explained, New York law applies where it is the location of "key face-to-face meetings" at which the scheme "originated," even where the conduct implementing the scheme occurred elsewhere. *Thomas H. Lee Equity Fund V, L.P. v. Mayer Brown, Rowe & Maw LLP*, 612 F. Supp. 2d 267, 283-84 (S.D.N.Y. 2009) (concluding "New York has the most significant interest in, or relationship to, the dispute" because New York "is the jurisdiction where [defendant's] fraud originated and where substantial activities in furtherance of the fraud . . . were committed"). Another court similarly held that "New York law governs" because "[t]hough [defendants'] alleged conspiracy was carried out throughout the Nation and world, substantial and vital portions of the alleged conspiracy were orchestrated and implemented in New York." *Falise v. Am. Tobacco Co.*, 94 F. Supp. 2d 316, 354 (E.D.N.Y. 2000). Numerous cases are in accord. *See, e.g.*, *In re Refco Inc. Sec. Litig.*, 892 F. Supp. 2d 534, 539 (S.D.N.Y. 2012) (applying New York law where the entities engaged in underlying tortious behavior "were controlled centrally from New York"); *Cohain v. Klimley*, 2010 WL 3701362, at *16 (S.D.N.Y. Sept. 20, 2010), *aff'd sub nom. Sissel v. Rehwaldt*, 519 F. App'x 13 (2d Cir. 2013) (applying New York law where loss was suffered out of state but Defendants designed and approved the fraud in New York); *Simon v. Philip Morris Inc.*, 124 F. Supp. 2d 46, 73 (E.D.N.Y. 2000) (concluding "New York's interest appears more significant in this action than that of any single other state" because "substantial portions of [defendants'] alleged conspiracy were orchestrated in New York"); *Maison Lazard Et Compagnie v. Manfra, Tordella & Brooks, Inc.*, 585 F. Supp. 1286, 1290 (S.D.N.Y. 1984) (applying New York law to unfair competition claim because "defendants did not merely, while in New York, dream up the possibility of misappropriating plaintiffs' exclusive rights . . . . [t]hey made the arrangements . . . covered their tracks, and received payment—all in New York").

This approach also best protects "the reasonable expectations of the parties who relied on the laws of that place to govern their primary conduct." *Licci*, 739 F.3d at 50. Ad-Hoc Defendants cite (Br. 57) *In re Citigroup Inc. Sec. Litig.*, 987 F. Supp. 2d 377, 390 (S.D.N.Y. 2013), to argue applying Mexican law protects the parties "justified expectations." But because the crucial components of Defendants' tortious conduct—the strategizing and direction of the conspiracy—occurred in New York, "all parties could reasonably expect New York law to govern the conduct within its borders that forms the basis of both claims." *Citigroup*, 987 F. Supp. 2d at 390. *Davis v. Costa-Gavras*, 580 F. Supp. 1082 (S.D.N.Y. 1984), which Defendants cite for the same proposition (Ad-Hoc Br. at 57), also supports the application of New York law: the parties' "justified expectation that their conduct will be judged by the rules of the jurisdictions in which they carry on their activities merits protection." *Id.* at 1092. Simply put, Defendant could reasonably expect to be judged by New York [redacted] *See Cavagnuolo v. Rudin*, 1996 WL 79861, at *5 (S.D.N.Y. Feb. 26, 1996) (emphasizing that "the state where the tortious conduct was initiated" has the strongest interest in applying its own law "because it is the punishment and deterrence of such conduct that is the impetus for every state's tort law").

Third, [redacted] *See, e.g.*, *Thomas H. Lee Equity Fund V*, 612 F. Supp. 2d at 284 (recognizing relevance of contract that "contains a New York choice-of-law provision").

2. New York Law Governs Count Three, Tortious Interference And Conspiracy To Tortiously Interference With Plaintiffs' Pemex Business Relationship

Because the crucial conduct constituting Defendants' tortious interference and related conspiracy to interfere with Plaintiffs' Pemex business relationship occurred in New York, New York law controls. *See Licci*, 739 F.3d at 48-49. As with Defendants' tortious interference with the Oro Negro Contracts, Defendants' strategy to interfere with Oro Negro's business relationship with Pemex [redacted], Compl. ¶ 274, which operated out of New York, *id.* ¶¶ 24, 26, and [redacted]. *Id.* ¶ 314. New York law should thus apply, as the Ad-Hoc Group defendants' tortious behavior was "controlled centrally from New York." *In re Refco*, 892 F. Supp. 2d at 539.

3. New York Law Governs Count Thirteen, Tortious Interference And Conspiracy To Tortiously Interfere With Plaintiffs' Bareboat Charters

As with Plaintiffs' prior tortious interference and attendant conspiracy claims, *supra*, New York law should govern because the crucial tortious conduct with regards to the Bareboat Charters occurred in New York. *See Licci*, 739 F.3d at 48-49. [redacted] *Id.* ¶ 415. And the Bondholders, many of whom operated out of New York, directed the Nordic Trustee to declare Oro Negro Drilling in default, take over the ownership and control of the Singapore Rig Owners, and seize the Rigs. *Id.* [redacted]

[redacted]

Id. ¶ 432. Such central control of the tortious conduct and attendant conspiracy from this jurisdiction strongly supports application of New York law. *See supra* at IV(B)(1).

[redacted] the Singapore Rig Owners to initiate litigation in New York to take over the Rigs, evincing Defendants' belief that this forum possesses a strong interest in governing this dispute. Compl. ¶¶ 285-288. That the underlying contracts Defendants interfered with had New York forum selection and U.S. maritime choice of law clauses strongly supports a finding that New York courts have a strong interest in applying their own law. *Ayco Co., L.P. v. Frisch*, 795 F. Supp. 2d 193, 204 (N.D.N.Y. 2011) (citing *White Plains Coat & Apron Co. v. Cintas Corp.*, 460 F.3d 281, 284 (2d Cir.), *certified question accepted,* 7 N.Y.3d 830 (2006), and *certified question answered,* 8 N.Y.3d 422 (2007), for the proposition that New York law applies "to tort claims where the contracts that were allegedly interfered with were governed by New York law"); *Innoviant Pharmacy, Inc. v. Morganstern*, 390 F. Supp. 2d 179, 187 (N.D.N.Y. 2005) (finding New York possessed the strongest interest in applying its tort law because the underlying contracts stipulated "New York's status as the forum state in this matter"). This Court should therefore apply New York law to the tortious interference and attendant conspiracy claims involving Bareboat Charters.

4. New York Law Governs Count Fourteen, Tortious Interference And Conspiracy To Tortiously Interfere With Plaintiffs' Singapore Rig Owners Business Relationship

New York law also governs Plaintiffs' tortious interference and related conspiracy claim for interference with Oro Negro's business relationship with the Singapore Rig Owners because

the significant tortious conduct occurred in New York. *See Licci*, 739 F.3d at 48-49. The conduct interfering with Plaintiffs' business relationship overlaps with the conduct interfering with the Bareboat Charters, addressed *supra*. In the course of its business, [redacted] requires application of New York law.

C. New York Law Governs Counts Two And Four, Plaintiffs' Aiding And Abetting Tortious Interference Clams Against The Seamex Defendants

For aiding and abetting, the relevant inquiry considers the site of "defendant's conduct [that] gave substantial assistance or encouragement to the principal to engage in the . . . tortious conduct." *In re Glob. Serv. Grp., LLC*, 316 B.R. 451, 462 (Bankr. S.D.N.Y. 2004). The site of the Seamex Defendants' conduct that gave substantial assistance and encouragement was centered in New York, requiring application of New York law. *See Licci*, 739 F.3d at 48-49.

The Seamex Defendants' crucial actions that gave substantial assistance or encouragement to Defendants' tortious interference with the Oro Negro Contracts and with Oro Negro's relationship with Pemex occurred in New York, requiring application of New York law. [redacted].

Many of these parties were operating out of New York while they were conceiving and directing their tortious plan. Fintech Advisory is an investment manager with a principal place of business in New York. *Id.* ¶ 69. Seadrill conducts permanent and substantial business in New York, and two current members of its Board of Directors are New York-based. *Id.* ¶ 74. Leand was also a member of Seadrill's Board of Directors from 2013 to July 2018, during all of the relevant time period. *Id.* Thus, while the Complaint does not detail the location of all of the communications—and does not need to—it is a reasonable inference that New York was the locus of the activity. [redacted]

D. New York Law Governs Count Nine, Abuse Of Process And Conspiracy To Commit Abuse Of Process

An abuse of process claim involves a defendant who "employs regularly issued legal process to compel performance or forbearance of some act," *Cook v. Sheldon,* 41 F.3d 73, 80 (2d Cir. 1994), and this conduct occurred in New York. AMA, which operates out of New York, Compl. ¶ 24, directed the abuse of process scheme and conspiracy, *id.* ¶ 316. [redacted] *Id.* ¶¶ 316, 326, 370. And as explained *supra* at IV(B)(1), the jurisdiction from which strategic decisions are made and conduct is directed possesses the strongest interest in New York's choice of law analysis.

But even if New York choice of law principles generally favor the application of Mexican law to Plaintiffs' abuse of process and attendant conspiracy claims (they do not), the exception outlined in *Weiss v. Hunna*, 312 F.2d 711 (2d Cir. 1963), requires application of New York law. In that case, the Second Circuit applied New York law to an abuse of process claim alleging the improper initiation of civil litigation in Austria to frustrate the plaintiff's contractual rights because Austrian law did not provide the plaintiff with an adequate remedy to address the injury. *Compare id*. at 716-717 *with* Compl. ¶ 306-307 ("[K]nowing that . . . Pemex would have to pay the $96 million owed . . . . [t]he Ad-Hoc Group, AMA, and their agents have launched a relentless campaign to criminally prosecute [plaintiffs] based on fabricated evidence.").[47]

Here, as in *Weiss*, the improper Mexican proceedings involve New York parties, and (according to Defendants) Mexican law would not provide an adequate remedy for the harm Plaintiffs have suffered due to the improper criminal investigations. The Ad-Hoc Group Defendants argue (Br. 65) that "[u]nder Mexican law, filing a criminal complaint in relation to a potential crime and providing evidence to support that complaint are protected rights under the Mexican Constitution." To the extent Defendants' characterization of Mexican law is accurate, there is no tort remedy for Plaintiffs' abuse of process claim concerning the pretextual initiation of criminal proceedings under Mexican law. Mexican law thus would "not provide the plaintiff[s] with a sufficient remedy to address the injury," *McNamee*, 762 F. Supp. 2d at 611, and New York law would govern Plaintiffs' abuse of process claim. The Ad-Hoc Group

[47] Citing an unpublished case from the Northern District of Ohio, Defendants argue (Ad-Hoc Br. 59) that *Weiss* has been effectively overruled by New York's adoption of the Second Restatement. But the Second Restatement itself states that there are occasions in which a "state other than that where the proceeding complained of occurred will be that of the most significant relationship and therefore the state of the applicable law," and points to *Weiss* as one such example. *See* Restatement (Second) of Conflict of Laws § 155. And courts in this circuit continue to apply *Weiss* as good law. *See McNamee v. Clemens*, 762 F. Supp. 2d 584, 611 (E.D.N.Y. 2011); *Tripodi v. Local Union No. 38, Sheet Metal Workers' Int'l Ass'n, AFL-CIO*, 120 F. Supp. 2d 318, 321 (S.D.N.Y. 2000).

Defendants attempt (Br. 59 n.44) to distinguish *Weiss* by noting the significant New York interests in that case, but Plaintiffs' action has equally compelling New York interests, as New York was the forum from which the conspiracy and actions to abuse the Mexican criminal process were orchestrated and directed. Moreover, the foreign process was abused to invalidate the Bareboat Charters, which are contracts containing New York forum selection clauses, and resulted in violations of this Court's Comity Order and the Bankruptcy Code.

Finally, as to Ad-Hoc Group Defendants' suggestion (Br. 58-59) that abuse of foreign process is impossible, this theory plainly conflicts with *Weiss*. And *all* of the case law on which Ad-Hoc Group relies (Br. 58-59) concerns malicious prosecution claims, not abuse of process. While both claims involve misuse of legal proceedings, they are fundamentally distinct torts, with distinct elements.[48] Most notably, for a claim of abuse of process, "it [i]s immaterial whether the original suit ha[s] been terminated or whether it was founded on probable cause. The employment of process to extort property [is], of itself, a sufficient cause of action." *Bd. of Ed. of Farmingdale Union Free Sch. Dist. v. Farmingdale Classroom Teachers Ass'n, Inc., Local 1889 AFT AFL-CIO*, 38 N.Y.2d 397, 402 (1975). Because the employment of the process with an improper purpose (rather than the outcome) is the critical issue for abuse of process, there is no legal or logical reason to bar claims for abuse of the process in a foreign country where the abuse was directed from New York.

[48] *See Bd. of Ed. of Farmingdale Union Free Sch. Dist. v. Farmingdale Classroom Teachers Ass'n, Inc., Local 1889 AFT AFL-CIO*, 38 N.Y.2d 397, 400 (1975) ("Abuse of process, i.e., causing process to issue lawfully but to accomplish some unjustified purpose, is frequently confused with malicious prosecution, i.e., maliciously causing process to issue without justification."). Critically, to state a claim for abuse of process, a plaintiff need not wait for the process to be completed and a ruling issue in his favor—rather, it is enough that the process be instituted for an improper purpose.

E. At A Minimum, New York Law Governs The Availability Of Punitive Damages

Even if Mexican law governs Plaintiffs' tort claims (and it does not), New York law still governs the availability of punitive damages with regards to each and every claim. As explained in *Deutsch*, "punitive damages are conduct-regulating issues," requiring application of "the law of the jurisdiction where the conduct occurred." 723 F. Supp. 2d at 524-25. To obtain punitive damages under New York law, Plaintiffs must establish that: "(1) the defendant's conduct is actionable as an independent tort; (2) the tortious conduct is of an egregious nature; (3) the egregious conduct was directed to the plaintiff; and (4) the conduct is part of a pattern directed at the public generally." *Wrap-N-Pack, Inc. v. Kaye*, 528 F. Supp. 2d 119, 124 (E.D.N.Y. 2007).

Accordingly, Plaintiffs may obtain punitive damages pursuant to New York law if Defendant's "egregious conduct" occurred in New York even if this Court determines that more of Defendants' tortious conduct occurred in México such that Mexican law governs the underlying tort claims. Here, as discussed above, the tortious conduct [redacted] constitutes the "egregious conduct" that supports punitive damages. In particular, the Ad-Hoc Group Defendants conspired to drive Plaintiffs' out of business to illegally seize Plaintiffs' assets (Compl. ¶¶ 195-278) and initiated vexatious litigation around the world (*id.* ¶¶ 279-397), all while they should have been aligned with Plaintiffs in seeking performance of the Oro Negro Contracts that Plaintiffs legitimately obtained (*id.* ¶¶ 398-436). [redacted] satisfies the "high degree of moral turpitude and demonstrates such wanton dishonesty as to imply a criminal indifference to civil obligations" threshold for punitive damages. *Walker v. Sheldon*, 10 N.Y.2d 401, 405 (1961). In short, Defendants [redacted]

[redacted] and therefore should be held accountable by the punitive damages laws of this forum. *Deutsch*, 723 F. Supp. 2d at 525 (emphasizing importance of applying punitive damages law of the forum in which the egregious "corporate decisions were made").

V. THE COMPLAINT STATES A CLAIM FOR THE CAUSES OF ACTION UNDER NEW YORK LAW (COUNTS 1-4, 9, 12-14, 17-18, AND 21)

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." For Defendants to prevail on their motions to dismiss under Rule 12(b)(6), they must show that the complaint has not alleged "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Leon v. Rockland Psychiatric Ctr.*, 232 F. Supp. 3d 420, 426-28 (S.D.N.Y. 2017). To be facially plausible, the complaint need not provide "detailed factual allegations"—only enough facts to allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In considering a motion to dismiss, the court must accept all well-pleaded factual allegations as true and draw all reasonable inferences in the plaintiff's favor. *Harris v. Mills*, 572 F.3d 66, 71-72 (2d Cir. 2009). Plaintiffs have stated a claim for each cause of action under New York law, as set forth more fully below.[49]

A. Plaintiffs State A Claim For Tortious Interference And Conspiracy To Interfere With The Oro Negro Contracts Under New York Law (Count 1)

Counts 1-2 allege tortious interference with the Oro Negro Contracts against the Ad-Hoc Group Defendants (except GGB) and the Seamex Defendants, and aiding abetting the same tortious interference against the Seamex Defendants. In particular, the Complaint alleges that the

[49] Plaintiffs withdraw the claims for prima facie tort (Count 19) and negligence (Count 20). Plaintiffs assert that the Complaint adequately states a claim for each of the remaining causes of action. However, if the Court is inclined to dismiss any count for failure to state a claim, Plaintiffs respectfully request leave to amend.

Ad-Hoc Defendants, conspiring with the Seamex Defendants, intentionally caused Pemex's termination of the Oro Negro Contracts in 2017 and interfered with the Oro Negro Contracts in [redacted].

A claim for tortious interference with contract requires: (1) the existence of a valid contract between the plaintiff and a third party; (2) defendant's knowledge of that contract; (3) defendant's intentional procurement of the third-party's breach of the contract without justification; (4) actual breach of the contract; and (5) damages resulting from the breach. *Lama Holding Co. v. Smith Barney Inc.*, 88 N.Y.2d 413, 424 (1996). The Complaint sufficiently alleges all five elements.

First, all elements are satisfied for the Complaint's allegations that the Ad-Hoc Defendants, conspiring with the Seamex Defendants, caused Pemex's termination of the Oro Negro Contracts in 2017. With regard to this tortious interference in the fall of 2017, the Ad-Hoc Defendants do not dispute four of the five elements: Oro Negro had valid contracts with Pemex; the Ad-Hoc Group knew of the contracts; Pemex breached the Contracts by terminating them; and Oro Negro suffered harm. Defendants' only challenge is to causation, arguing that Pemex was predisposed to terminate the Contracts. Ad-Hoc Br. 67-68; Seamex Br. 24-25.[50]

However, the complaint need only state facts from which it can be reasonably inferred that the contractual breach would not have occurred but for the defendant's tortious interference. *See Rich v. Fox News Network, LLC*, 939 F.3d 112, 127 (2d Cir. 2019). As *Rich* held, in reversing the dismissal of a tortious interference claim, "[t]he allegations here plainly claim that, but for the [defendants'] conduct … , the breach would not have occurred. In the face of these

[50] The Ad-Hoc Defendants also suggest (Br. 69 n.52) that the Complaint does not adequately allege fraudulent misrepresentation "to support Plaintiff's tortious interference claim." But Plaintiffs are not bringing a claim for fraudulent misrepresentation; fraud is not an element of tortious interference, and Defendants' invocation of Rule 9(b) (which applies only to fraud claims) is completely inapposite.

allegations, the degree to which the contract would have been breached anyway is a question properly left for discovery and, perhaps, jury determinations." *Id.* The same is true here, as the Complaint clearly alleges causation. *See* Compl. ¶ 449. It also specifically alleges that Pemex agreed to terminate the contracts only after [redacted] *Id.* ¶ 187. Indeed, given Perforadora's ultimate acceptance of the 2017 Proposed Terms in August, and Pemex's nonchalance regarding the *concurso* filing, Pemex's actions [redacted]

Defendants' supposition that the breach would have occurred anyway cannot be resolved on the pleadings and, regardless, has no factual support. In particular, the Ad-Hoc Defendants assert (Br. 67-68) they could not have caused the breach because that Pemex had "repudiated the contracts in March 2017," following a "similar pattern" in 2015 and 2016, and thus they could not have caused the breach. But Defendants cannot support the assertion that Pemex repudiated of the contracts in 2015, 2016, or March 2017. In March 2017, Pemex attempted to impose the 2017 Amendments by threatening cancellations and withholding payments, and Pemex had taken a hard line before to force acceptance of amendments in 2015 and 2016, but *in each case without cancelling the Oro Negro Contracts*. Compl. ¶¶ 164, 183. Indeed, Pemex has not cancelled the contracts of any other vendor of rigs. Compl. ¶¶ 155, 159. Most tellingly, in September 2017, six months after initiating the negotiation process over the 2017 terms, Pemex had taken no steps towards terminating the Oro Negro Contracts, belying any assertion that termination would have occurred absent the Ad-Hoc Group's involvement. The history of the relationship between the

parties suggested Pemex would *not* terminate the Contracts once Oro Negro capitulated, [redacted] Compl. ¶ 231. Only after Defendants intervened did Pemex decide to break with its own prior practice and terminate the Oro Negro Contracts. This makes perfect sense: Pemex had no incentive to terminate the Contracts while it was not paying Perforadora under them anyway.[51]

Second, the Complaint alleges that the Ad-Hoc Defendants tortiously interfered with Pemex's performance under the Oro Negro Contracts in 2018. The Ad-Hoc Defendants argue (Br. 70 n.53) in a footnote that the Pemex Contracts were already terminated and thus the claim fails at the first element. But there is no factual support for the assertion that the termination pre-dated the interference in 2018. At that time, there was an injunction in place prohibiting termination of the Oro Negro Contracts and [redacted] *See* Compl. ¶¶ 424-425. In the most recent ruling on the issue, the Mexican Federal Court considering the issue *ruled that the terminations were invalid*, *id.* ¶ 220, and thus that the contract terminations were null and void. Accordingly, the Complaint more than sufficiently alleges the Contracts were still in effect in 2018 when the Bondholders interfered with them. And where the validity of a contract underlying a claim for tortious interference with an existing contractual relationship is in question, the plaintiff may allege tortious interference with a

[51] Seamex Defendants (Br. 23, 25) cite *Granite Partners, L.P. v. Bear, Stearns & Co., Inc.*, 17 F. Supp. 2d 275 (S.D.N.Y. 1998), to argue the causation requirement is not met where a conspiring defendant is party to the contract in question. But there, a tortious interference claim could not be maintained where the facts in the complaint showed that each of the alleged co-conspirators made an individual decision to breach their contracts. *Id.* at 295. Here, in contrast, the allegations establish that, despite its coercive negotiation tactics, Pemex *would not have terminated* but for the Ad-Hoc Group's interference. The other cases Defendants cite are likewise inapposite. *See Sharma v. Skaarup Ship Mgmt. Corp.*, 699 F. Supp. 440, 447 (S.D.N.Y. 1988), *aff'd*, 916 F.2d 820 (2d Cir. 1990) (noting that "in no way do plaintiffs allege that the [] defendants were the motivating force behind [the contracting party's] breach"); *Mina Inv. Holdings Ltd. v. Lefkowtiz*, 16 F. Supp. 2d 355, 360 (S.D.N.Y. 1998) (the Complaint alleged that the breaching parties had already breached the agreement at issue on *nine* prior occasions, and failed to allege any conduct by the defendant other than that it "acted with" the breaching party).

contract and tortious interference with a business relationship in the alternative. *See G-I Holdings, Inc. v. Baron & Budd*, 238 F. Supp. 2d 521, 534-36 (S.D.N.Y. 2001).

B. Plaintiffs State A Claim For Tortious Interference With Business Relationship Under New York Law: Relationship With Pemex (Count 3)

Count 3 alleges that the Ad-Hoc Group Defendants (except GGB) and the Seamex Defendants knowingly damaged Integradora and Perforadora by interfering in Pemex's business relationship with Perforadora.

A claim for tortious interference with business relations must allege "(1) business relations with a third party; (2) defendants' interference with those business relations; (3) that defendants acted with the sole purpose of harming the plaintiff or used dishonest, unfair, or improper means; and (4) injury to the relationship." *Raedle v. Credit Agricole Indosuez*, 670 F.3d 411, 417 (2d Cir. 2012). All of these elements are alleged here.

First, the Complaint alleges that the Ad-Hoc Group tortiously interfered in Oro Negro's relationship with Pemex prior to 2018. For these allegations, the Ad-Hoc Defendants argue (Br. 73-74) only that the third element—that defendants acted with the sole purpose of harming the plaintiff or used dishonest, unfair, or improper means—is not satisfied. However, the Ad-Hoc Defendants provide no basis for this argument, aside from referencing back to their prior argument on tortious interference with contract, which is erroneous for the reasons stated above.

Regardless, the Complaint adequately alleges (1) malice; and (2) use of dishonest, unfair, or improper means, either of which is sufficient to state a claim for tortious interference with a business relationship. *See Boehner v. Heise*, 734 F. Supp. 2d 389, 405 (S.D.N.Y. 2010); *Darby Trading Inc. v. Shell Int'l Trading & Shipping Co.*, 568 F. Supp. 2d 329, 345 (S.D.N.Y. 2008) (recognizing that the third element requires that the defendant acts with either the sole purpose of harming the plaintiff or uses dishonest, unfair, or wrongful means). Specifically, the Complaint

alleges that the Ad-Hoc Defendants acted with the sole purpose of destroying Oro Negro's business and taking over its Rigs. Compl. ¶¶ 228-30, 261, 464. The Ad-Hoc Group's interference was done intentionally, and with no justification or excuse, as they had no contractual relationship to and no interest in the Oro Negro Contracts at the time of the interference. *See id.* ¶ 464. Further, they did so [redacted] *Id.* ¶¶ 187-90. These allegations more than suffice to show malice and dishonesty. *See MDC Corp. v. John H. Harland Co.*, 228 F. Supp. 2d 387, 398 (S.D.N.Y. 2002) (declining to dismiss a tortious interference claim because "the allegation that a defendant acted maliciously in procuring a breach of contract is sufficient").

Second, the Complaint alleges that the Ad-Hoc Group tortiously interfered in Oro Negro's relationship with Pemex in 2018. For these allegations, the Ad-Hoc Defendants argue (Br. 74) that the Complaint fails to allege a business relationship because Oro Negro lacked reasonable certainty of future contractual relations. However, they ignore the Complaint's allegations [redacted] Compl. ¶¶ 272-76. Notably, New York law recognizes that automatically renewing, or "ever green," contracts create a reasonable expectation of a future business relationship. *Ullmannglass v. Oneida, Ltd.*, 86 A.D.3d 827, 830 (3d Dep't 2011). In 2018, Oro Negro not only had a history of doing business with Pemex, but Pemex was aware that Oro Negro maintained that the contracts between the parties were still

valid.[52] Thus, this was much more than a vague "potential contract," and, as alleged, more even than a renewable contract—it was a contract that had been terminated improperly, and that Pemex was considering reviving. Thus, the Complaint supports the reasonable inference that Pemex intended to reinstate Oro Negro's contracts on terms similar to those the parties had operated under in the past.[53]

Moreover, for the 2018 tortious interference, Plaintiffs also allege malice (as well as dishonest, unfair, and improper means) because the [redacted] Notably, by 2018, it was clear that the Bondholders would not be able to legally seize the Rigs during the pendency of the *concurso*. Thus, the Ad-Hoc Defendants, who had no rigs of their own, [redacted] *See* Compl. ¶¶ 272-74. Only an intent to harm Oro Negro could motivate such egregious behavior and, at a minimum, that is a plausible inference from the Complaint that the Court must accept on a motion to dismiss. Regardless, there remains a factual question as to whether the Ad-Hoc Defendants' conduct in 2018—for instance, its [redacted]

[52] As explained *supra* at V(A), where the validity of a contract is at issue, the plaintiff may properly plead both interference with the contract and interference with the business relationship. Whether Pemex intended to treat the contracts as valid and intended to begin to perform, or intended to renegotiate replacement contracts is a question of fact not appropriately determined on a motion to dismiss. *See A.V.E.L.A., Inc. v. Estate of Marilyn Monroe, LLC*, 131 F. Supp. 3d 196, 208 (S.D.N.Y. 2015) (challenge to allegation in complaint "raises a question of fact that cannot be resolved on a motion to dismiss").

[53] [redacted] *See* Compl. ¶¶ 231-32.

[redacted] Compl. ¶¶ 261, 265—constituted dishonest, unfair, or improper means.

C. Plaintiffs State A Claim For The Seamex Defendants' Aiding And Abetting Tortious Interference With The Oro Negro Contracts And With Perforadora's Relationship with Pemex (Counts 2 and 4)

Counts 2 and 4 allege that the Seamex Defendants aided and abetted the Ad-Hoc Group Defendants' plans to tortiously interfere with the Oro Negro Contracts and Perforadora's business relationship with Pemex.

To state a cause of action for aiding and abetting, the plaintiff must allege: "(1) the existence of a violation by the primary wrongdoer; (2) knowledge of the violation by the aider and abettor; and (3) proof that the aider and abettor substantially assisted the primary wrongdoer." *In re Refco Sec. Litig.*, 759 F. Supp. 2d 301, 333 (S.D.N.Y. 2010) (citation and quotation omitted). The Seamex Defendants assert (Br. 33-36) that the Complaint fails to allege all three elements. With regard to the existence of tort violations, the Seamex Defendants merely refer to the Ad-Hoc Group's arguments, which are erroneous for the reasons stated *supra* at V(A)-(B). And contrary to the Seamex Defendants' arguments, the Complaint adequately pleads the remaining two elements, as set forth below.

The Complaint alleges that the Seamex defendants [redacted] In particular, the Complaint alleges that the Seamex defendants [redacted]

[redacted]

The Complaint also alleges that the Seamex Defendants substantially assisted the Ad-Hoc Group Defendants in interfering with the Oro Negro Contracts and Perforadora's relationship with Pemex. For this element, all that is required is that the Seamex entities "affirmatively . . . enable[d] [the tortious interference] to proceed." *See Kolbeck v. LIT Am., Inc.*, 939 F. Supp. 240, 247 (S.D.N.Y. 1996), *aff'd*, 152 F.3d 918 (2d Cir. 1998) (quotation and citation omitted). As alleged in the Complaint, it was critical to Pemex that the Bondholders would be "willing [and] capable" of operating the Rigs for Pemex's benefit if Pemex cancelled the Oro Negro Contracts. Compl. ¶ 232. The Bondholders, who were not capable of operating the Rigs themselves, were only able to give these assurances to Pemex because the Seamex Defendants agreed that they would manage and operate the Rigs. *Id.* ¶¶ 238-41. Thus, it is more than reasonable to infer from the Complaint that the Seamex Defendants enabled the tortious interference.[55]

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[54] The Seamex Defendants' suggestion (Br. 35) that the particular communications establishing knowledge must be specifically identified has no legal basis, as this is not a fraud claim governed by Rule 9(b), and thus the claim need not be pleaded with particularity. Nor can this Court disregard Plaintiffs' allegations simply because the Seamex Defendants (Br. 36 n.17) label "conclusory" plainly *factual* allegations.

[55] Discovery has confirmed these allegations, and further detail could be added to the Complaint if necessary. [redacted]

D. Plaintiffs State A Claim For Abuse of Process (Count 9)

Count 9 alleges that the Ad-Hoc Defendants and Singapore Defendants abused the criminal process in México to harm Oro Negro and Mr. Gil. Specifically, they caused at least four criminal proceeding to be initiated in México against Perforadora, its officers, and employees for the purpose of causing harm to Oro Negro and its associates and to gain control of Oro Negro's assets.

Under New York law, to state a claim for abuse of process, the plaintiff must allege that "there was '(1) regularly issued process, either civil or criminal; (2) an intent to do harm without excuse or justification; and (3) use of the process in a perverted manner to obtain a collateral objective.'" *D'Amico v. Corr. Med. Care, Inc.*, 120 A.D.3d 956, 960 (4th Dep't 2014) (quotations and citation omitted); *see also Borison v. Cornacchia*, 1997 WL 232294, at *2 (S.D.N.Y. May 7, 1997). The Complaint adequately alleges each element.

First, the Complaint alleges that the Ad-Hoc Defendants and Singapore Defendants initiated regularly issued process. In particular, [redacted] the Singapore Defendants to initiate at least four criminal proceeding in México against Perforadora, its officers and employees between June and October of 2018. *See* Compl. ¶¶ 321, 324, 343, 349, 394.

Second, the Complaint alleges that the Ad-Hoc Defendants and Singapore Defendants [redacted], the Complaint alleges that (1) the allegations underlying the criminal proceedings were never pursued in any other forum (*i.e.*, to recover funds for the Ad-Hoc Defendants, Singapore Rig Owners, or others), Compl. ¶ 322; (2) the criminal complaint filed by the Singapore Rig Owners against Integradora with PGR, México's federal prosecutors' office, was used only as a pretense to freeze funds, and has not been advanced since the federal judge denied the seizure request, *id.* ¶¶ 334, 350; and (3) the criminal

complaint filed by the Singapore Rig Owners before the México City DA, México City's local prosecutors' office, is a mere copy of the PGR case, filed before a more "friendly" judge when the federal courts refused to grant the accounts seizure, *id.* ¶ 352. The Complaint also notes that the relief requested in the México City DA proceeding has no relation to the alleged "harm" (*i.e.*, USD 500,000 in supposed sham company invoices) but seeks the seizure of almost USD 90 million in the trust, and then later the seizure of USD 750 million in Rigs. *Id.* ¶¶ 356, 368, 373. Further, the Complaint alleges that the requests were intended only to prevent the release of Pemex payments from the Mexican Trust to Perforadora. *Id.* ¶ 353.

Third, the Complaint alleges the process was used improperly and solely to obtain a collateral objective. The Complaint clearly alleges that the Ad-Hoc Group seized, through the Singapore Rig Owners, the Mexican Trust's and Perforadora's bank accounts and almost seized possession of the Rigs with the objective of dispossessing Perforadora of its money and assets and driving it out of business. Compl. ¶¶ 1, 228-30, 261, 270, 310, 435, 464. The Complaint also alleges that the Ad-Hoc Group or its agents may have paid bribes in México to fabricate evidence, and obtain the seizure and restitution orders. *Id.* ¶¶ 317-19. *See Friends of Rockland Shelter Animals, Inc. (FORSA) v. Mullen*, 313 F. Supp. 2d 339, 343 (S.D.N.Y. 2004) (explaining that a party is not immune from tort liability when it precipitates a government investigation based on false evidence or through bribery).

The Singapore Defendants assert (Br. 40-41) that Plaintiffs failed to allege how the Singapore Defendants improperly used the process after it was issued. However, the Singapore Defendants disregard the prior adversary proceeding, in which this Court issued an injunction prohibiting them from taking any further actions, *including in the criminal proceedings* to attempt to take over Oro Negro's Rigs. Regardless, the Complaint specifically alleges that the

Singapore Defendants used the criminal proceedings to improperly obtain the Seizure Order and the Rigs Take-Over Order. *See* Compl. ¶ 499.[56]

E. Plaintiffs State A Claim For Tortious Interference With The Bareboat Charters (Count 13)

Count 13 alleges that the Ad-Hoc Group Defendants (except GGB) tortiously interfered with the Bareboat Charters. Specifically, [redacted] the Singapore Rig Owners to breach the Bareboat Charters to enable the Ad-Hoc Defendants to take control of Oro Negro's Rigs.

The Complaint alleges that the Ad-Hoc Group, conspiring with the Seamex Defendants, tortiously interfered with the Bareboat Charters.[57] The Ad-Hoc Group argues (Br. 69-72) that the Complaint fails to state a claim for tortious interference with the Bareboat charters because (1) the Bareboat Charters terminated concomitantly with the termination of the Oro Negro Contracts and thus there was no breach; and (2) any interference is excused because the Ad-Hoc Defendants had an economic interest in the Bareboat Charters through their ownership of the Singapore Rig Owners. The first argument conflicts with the allegations of the Complaint and the second is erroneous as a matter of law.

First, as explained *supra* at V(A), the validity of Pemex's terminations remained contested through 2019, and they were recently invalidated. Compl. ¶ 220. Because Pemex's

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[56] The Singapore Defendants also argue (Br. 41) that Plaintiffs have not stated a claim for malicious prosecution because the proceedings have not terminated in Plaintiffs' favor. But as evident from the Complaint, Plaintiffs have not brought a claim for malicious prosecution; abuse of process has no such element of termination in favor of the plaintiff.

Ad-Hoc Group Defendants fail to identify *any* unmet element of an abuse of process claim, relying (Br. 77-78) solely on their argument that no cause of action may lie for allegations of abuse of foreign process, which is erroneous for the reasons stated *supra* at IV(D).

[57] The Complaint also adequately alleges a claim for tortious interference with the Bareboat Charters against the Singapore Defendants for the reasons addressed *infra* III(F), as the Singapore Defendants seek dismissal of Counts 13 (tortious interference with the Bareboat Charters) and 14 (tortious interference with the underlying business relationship) on the same grounds. *See* Singapore Rig Owners' Br. 45-47.

terminations were never valid in 2017,[58] the Bareboat Charters likewise did not automatically terminate. [redacted] *Id.* ¶ 203, 243. Thus, the Complaint adequately alleges that the Singapore Rig Owners, [redacted] breached the Bareboat Charters by terminating them while the Pemex terminations remained in dispute. *Id.* ¶ 250.

Second, the Ad-Hoc Defendants' economic interest defense is inapplicable here. The economic interest defense is unavailable to a party that is only protecting its own interests, rather than its stake *in the breaching party's business*. *See Horowitz v. Nat'l Gas & Elec., LLC*, No. 17-CV-7742 (JPO), 2018 WL 4572244, at *6 (S.D.N.Y. Sept. 24, 2018) (holding that "the economic interest defense is not [] available to [defendant] because the [plaintiffs] have not alleged that [defendant]'s interference with the contract between the [plaintiffs] and NGE was for anyone's benefit other than [the defendant]'s own"); *Wells Fargo Bank, N.A. v. ADF Operating Corp.*, 50 A.D.3d 280, 281 (1st Dep't 2008) ("The economic interest defense is not applicable because plaintiff alleged that defendants were not acting to protect their financial interests in ADF LI when they sold their interests to a third party, but rather sold to profit themselves to the detriment of ADF LI.").

Here, there is no allegation that the Ad-Hoc Group acted in any way that would protect or advance the Singapore Rig Owners' business. [redacted] Compl. ¶¶ 228-30, 251, 261, 464. The Bondholders'

[58] *In re Perforadora, et al.*, No. 18-11094 ECF 2 ¶ 71. n.17 (Bankr. S.D.N.Y.) (SCC) (Jointly Administered)

future contingent stake in the Singapore Rig Owners' business was never threatened, and thus their actions could not have been designed to protect that interest.

F. Plaintiffs State A Claim For Tortious Interference With Perforadora's Business Relationship With The Singapore Rig Owners (Count 14)

Count 14 alleges that the Ad-Hoc Defendants and Singapore Directors tortiously interfered with Perforadora's business relationship with the Singapore Sig Owners. Specifically, the Complaint alleges a series of actions to ensure that Perforadora could not maintain and operate the Rigs, and as such continue their relationship with the Singapore Rig Owners.

The Complaint also adequately pleads all elements for tortious interference with the business relationship between Perforadora and the Singapore Rig Owners. The Ad-Hoc Defendants (Br. 75) and Singapore Defendants (Br. 45 n.25) argue that the Complaint fails to allege an existing relationship between Perforadora and the Singapore Rig Owners that would have continued absent the Ad-Hoc Group's interference. In support of this position, they repeat (Ad-Hoc Br. 75) that the Bareboat Charters terminated as soon as Pemex terminated the Oro Negro Contracts, thereby destroying any potential business relationship, but as explained *supra* at V(A), the Bareboat Charters *did not terminate* when Pemex purported to terminate the Oro Negro contracts.

Moreover, as alleged in the Complaint, the Ad-Hoc Group and the Singapore Rig Directors took a series of actions designed to ensure Perforadora could not maintain and operate the Rigs—both activities essential to its ability to maintain its business relationship with the Singapore Rig Owners. These actions included instituting false criminal actions to deprive Oro Negro of funds and attempt to seize its assets such that it would be unable to operate or maintain the Rigs, impeding the Singapore Rig Owners from paying costs owed to Perforadora, and preventing Perforadora from paying the net funds Pemex is required to pay Perforadora under the

Oro Negro Contracts (the "Charter Hire"), by obtaining a seizure of Oro Negro's accounts. Compl. ¶¶ 528-33. Absent these actions, Perforadora would have undergone an orderly reorganization and reasonably expected to continue its pre-existing business relationship with the Singapore Rig Owners. *See id*.

The Singapore Directors also err in arguing (Br. 45-46) for immunity based on their status as directors. The Singapore Directors rely on the "general rule that a corporate officer who is charged with inducing the breach of a contract between the corporation and a third party is immune from liability," *Buckley v. 112 Cent. Park S., Inc.,* 285 A.D. 331, 334 (App. Div. 1954), but disregard that this immunity only applies "if it appears that he is acting in good faith as an officer," *id*., and did not commit any independent torts. *Murtha v. Yonkers Child Care Ass'n Inc.*, 45 N.Y.2d 913, 915 (1978). Here, the Complaint alleges that the Singapore Directors did not act independently in the best interest of the Singapore Rig Owners, [redacted] Compl. ¶¶ 236-37, 255, 315. Indeed, with respect to the criminal proceedings, [redacted] *See id*. ¶ 316. Taking these allegation as true, the Complaint alleges that the Singapore Directors did not act in good faith as officers, [redacted] This is sufficient to state a claim for tortious interference against the Singapore Directors. *See Buckley* 285 A.D. at 335 (explaining that when "the officer commits fraudulent, deceitful acts motivated by a personal desire for monetary gain at the expense of the plaintiff, we see no reason to shroud him with a mantle of immunity upon the fictitious theory that he was protecting the interests of

the corporation, its stockholders and creditors in the performance of his duties as a corporate officer").

Additionally, the Singapore Directors argue (Br. 46) that the Complaint fails to identify a "crime or independent tort" that would support a claim for tortious interference with a business relationship. As set forth *supra* at V(B), the Complaint must allege that the defendants "acted with the sole purpose of harming the plaintiff or used dishonest, unfair, or improper means." *Raedle*, 670 F.3d at 417. The Complaint satisfies this requirement, alleging that the Singapore Directors, conspiring with the Ad-Hoc Group, acted intentionally to destroy Oro Negro. Compl. ¶¶ 412, 416-417, 420, 424, 524-528.

G. Plaintiffs State A Claim For Civil Conspiracy Against The Seamex Defendants (Counts 1, 3, and 13)

Counts 1, 3, and 13 allege civil conspiracy against the Seamex Defendants for conspiring with the Ad-Hoc Group to tortiously interfere with the Oro Negro Contracts, the Bareboat Charters, and Perforadora's relationships with Pemex and the Singapore Rig Owners.

Civil conspiracy requires (1) an agreement between two or more parties; (2) an overt act in furtherance of the agreement; (3) the parties' intentional participation in the furtherance of a plan or purpose; and (4) resulting damage or injury. *Reich v. Lopez*, 38 F. Supp. 3d 436, 461 (S.D.N.Y. 2014), *aff'd*, 858 F.3d 55 (2d Cir. 2017). Here, the Complaint alleges that the Seamex Defendants conspired with the Ad-Hoc Group to tortiously interfere with the Oro Negro Contracts, the Bareboat Charters, and Perforadora's relationships with Pemex and the Singapore Rig Owners.

The Seamex Defendants' argument (Br. 26, 28, 33) that the Complaint fails to allege conspiracy as to each underlying tort claim boils down to a single conclusory assertion that the

Complaint fails to allege the "what, when, where and how of the conspiracy."[59] Thus, the Seamex Defendants appear to mount a general challenge to all elements except damages, without any explanation of how any of these elements are not adequately alleged. Moreover, the requirement to plead "what, when, where and how" concerns the application of Rule 9(b) for fraud claims, not (as here) Rule 8. *See, e.g.*, *Doe ex rel. Doe v. Harris*, No. CIV.A. 14-0802, 2014 WL 4207599, at *5 (W.D. La. Aug. 25, 2014), *aff'd*, 2015 WL 5664255 (W.D. La. Sept. 24, 2015) ("[P]leading the 'who, what, when, where, and how' is a heightened requirement for allegations of fraud or mistake imposed by Rule 9(b). In contrast, Rule 8(a)(2) requires only a short and plain statement of the claim ….") (citation omitted). And applying the proper standard, the Complaint alleges all elements.

[redacted]

[59] Additionally, the Seamex Defendants argue (Br. 24-33) that they did not independently and directly communicate with Pemex to cause Pemex to terminate Oro Negro's contracts or terminate its relationship with Perforadora, and therefore did not tortiously interfere with those contracts or the business relationship. The Complaint does not base its claim against the Seamex entities on their direct interference, but rather on [redacted] Thus, Plaintiffs do not and need not address Seamex's arguments regarding direct and independent interference.

[redacted]

Second, the Complaint alleges overt actions in furtherance of the scheme. [redacted]

[redacted]

60 [redacted]

61 That the conspiracy ultimately failed to pan out as Defendants envisioned is irrelevant [redacted]

Third, the Complaint alleges intentional participation in the interference. The Complaint leaves no doubt the [redacted]

H. Plaintiffs State A Claim For Civil Conspiracy Against The Ad-Hoc Group Members (Counts 1, 3, 9, 13, 14, 21)

Counts 1, 3, 9, 14, and 21 allege civil conspiracy against the Ad-Hoc Group Members. Specifically, the Complaint alleges that the Ad-Hoc Group members joined the Group with the purpose of conspiring to commit the underling torts alleged in the Complaint, [redacted]

The Complaint clearly [redacted] *See* Compl. ¶¶ 413-418, 421-423, 428-431.

Defendants' only argument to the contrary (Ad-Hoc Br. 77) is that Plaintiffs supposedly do not allege that Alterna, CQS, GHL, or SFIL did anything other than join the Ad-Hoc Group.[62] However, "a conspiracy may be alleged 'for the purpose of showing that a wrong was committed jointly by the conspirators and that, because of their common purpose and interest, the acts of one may be imputed to the others.'" *Aetna Cas. & Sur. Co. v. Aniero Concrete Co.*, 404 F.3d 566, 591 (2d Cir. 2005) (per curiam) (citation omitted). The cases Defendants cite are

[62] The Ad-Hoc Defendants do not make the same argument with respect to Defendants Ericil, Bodden, Leand, AMA, or ARCM, and thus appear to concede that participation on the conspiracy is adequately pled as to those individual defendants.

inapposite, as they do not address claims for conspiracy, *see In re TransCare Corp.*, 592 B.R. 272, 288 (Bankr. S.D.N.Y. 2018); *Toumazou* v. *Turkish Republic of N. Cyprus*, 71 F. Supp. 3d 7, 21 (D.D.C. 2014), or concern fraud claims requiring application of Rule 9(b), *see In re LightSquared Inc.*, 504 B.R. 321, 356 (Bankr. S.D.N.Y. 2013).

The Complaint alleges that each member individually joined the Ad-Hoc Group and explains that the Ad-Hoc Group, as a unit, is ultimately responsible for almost all decisions taken by Nordic Trustee on behalf of the Bondholders. The Complaint plainly alleges that the Ad-Hoc Group of Bondholders together performed the tortious conduct at issue. *See* Compl. ¶¶ 166-168, 182-194, 413-418, 421-423, 428-431. This more than suffices because where co-conspirators take actions as a group, so long as the "[c]omplaint alleges each Defendant's participation [in the conspiracy] separately, it is not impermissible group pleading to refer to their collective actions in furtherance of the conspiracy using a more general phrase." *Iowa Pub. Emps.' Ret. Sys. v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, 340 F. Supp. 3d 285, 317 (S.D.N.Y. 2018) (holding it sufficient that the complaint alleged that each member of the conspiracy "agreed to participate in the conspiracy," despite the fact that their actions in furtherance of the conspiracy were pled in the aggregate).[63]

In particular, the Complaint alleges that Nordic Trustee engaged [redacted] Compl. ¶¶ 173-174,

[63] The Singapore Defendants' argument (Br. 31-33) against "group pleading" fails for the same reasons: The Singapore Defendants consist of the five Singapore Rig Owners and the individuals who sit on their Boards of Directors, and they are *all* alleged to have acted together in a conspiracy to perform the unlawful acts, and all are alleged to be under the unlawful control of the Ad-Hoc Group. Compl. ¶¶ 76-81. Indeed, the Singapore Rig Owners acted together in suing Perforadora in the Southern District of New York. *Id.* ¶ 80. Nothing more is required to state claims against all of the Singapore Defendants, and there is no requirement to state each of their names individually for each of the actions they performed together. *See Iowa Pub. Emps.' Ret. Sys*., 340 F. Supp. 3d at 317.

240. The Complaint alleges that Nordic Trustee acts only at the behest of the Bondholders, and can only take actions approved by holders of at least 50% of the Bonds. *Id.* ¶¶ 118, 166. The Complaint further alleges that members of the Ad-Hoc Group have controlled all the relevant decisions made on behalf of the Bondholders by virtue of their control of 60% of the Bonds.[64] *Id.* Thus, it is a more than reasonable inference that, for Nordic Trustee to act, including through and [redacted] *each member of the Ad-Hoc Group* must have agreed to the proposed action. *See id.*

I. Plaintiffs State A Claim For Implied Covenant Of Good Faith And Fair Dealing (Count 12)

Count 12 alleges that the Singapore Rig Owners breached the implied covenant of good faith and fair dealing by acting in bad faith in terminating the Bareboat Charters when Oro Negro Contracts had not been validly terminated and the *Concurso* Court had enjoined them from taking any actions to terminate the Bareboat Charters.

To establish a claim for breach of the implied covenant of good faith and fair dealing, a plaintiff must establish the following: "(1) defendant must owe plaintiff a duty to act in good faith and conduct fair dealing; (2) defendant must breach that duty; and (3) the breach of duty must proximately cause plaintiff's damages." *Schonfeld v. Wells Fargo Bank, N.A. for Aegis Asset Backed Sec. Tr. Mortg. Pass-Through Certificates, Series 2004-3*, No. 115CV01425MADCFH, 2017 WL 4326057, at *5 (N.D.N.Y. Sept. 27, 2017) (citation and quotation omitted). Under New York law, "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance." *In re Calpine Corp.*, No. 05-60200(BRL), 2008 WL 687071, at *2 (Bankr. S.D.N.Y. Mar. 12, 2008).

[64] The exceptions—amendments to the bond agreement and waivers of rights thereunder—are not applicable here. Compl. ¶ 115, n.5.

Relying on the general rule that the implied covenant does not trump express provisions of the contract at issue, the Singapore Rig Owners argue (Br. 42-43) that the Complaint fails to state a claim because the Bareboat Charters specifically provided for their termination upon the termination of the Oro Negro Contracts regardless of the reason the Oro Negro contracts were terminated. However, the Complaint does not allege that the Oro Negro Contracts ever terminated. Quite the opposite: the Complaint states that Pemex's purported terminations were null and void—*i.e.*, as a matter of law, the Oro Negro Contracts did not terminate with Pemex's purported termination in October 2017. Compl. ¶¶ 203, 220. In addition, the Singapore Rig Owners, [redacted], were actively involved in the *concurso* and well aware of the *Concurso* Court's orders of October 5 and 11 and December 29, 2017, which not only confirmed that the Oro Negro Contracts had not been terminated, but also enjoined any actions to terminate the Bareboat Charters (including with retroactive effect). *Id.* ¶¶ 203, 206-08. Thus, the Complaint adequately alleges that the Singapore Rig Owners violated their duty of good faith and fair dealing by purporting to cancel the Bareboat Charters on the basis of Pemex's legally void purported terminations.

J. Plaintiffs State A Claim For Breach Of The Bareboat Charters: Reimbursement Costs (Count 17)

Count 17 alleges breach of the Bareboat Charters against the Singapore Rig Owners because they owe but have failed to pay the Reimbursement Costs to Perforadora, as set forth in the Bareboat Charters.

The Singapore Rig Owners assert (Br. 47-48) that Perforadora cannot maintain a claim for breach of the Bareboat Charters with regard to reimbursement costs[65] because (1) no demand

[65] The portion of reimbursement costs attributable to pre-contractual costs incurred for the *Impetus* are addressed in conjunction with the claim for unjust enrichment.

for payment was ever made; and (2) Perforadora misreads section 7.1 of the Bareboat Charters. Neither argument finds support in the text of the contract.

First, while the Bareboat Charters set forth specific notice requirements for, *inter alia*, redelivery of the Rigs and postings of notices regarding liens, there is no specific contractual notice requirement applicable to requests for reimbursement. Thus, there is no basis in the Complaint or the referenced contract to assume, as the Singapore Rig Owners urge, that Perforadora failed to request reimbursement.

Second, the Singapore Rig Owners argue (Br. 47) that Plaintiffs used "artful drafting" to assert that the Singapore Rig Owners should pay for certifications. Lest there be any doubt, the entirety of the provision at issue (which the Singapore Rig Owners fail to provide) states:

> The Vessel shall during the Charter Period be in the full possession and at the absolute disposal for all purposes of Charterer and under its control. Charterer shall bear the cost of maintaining the Vessel, her spare parts and documentation in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice, and *Charterer shall keep the Vessel with unexpired classification of the same class as at delivery of the Vessel (and free from overdue recommendations and conditions of class), and with other required certificates in force at any time. Annual survey, special survey, major maintenance and major overhaul of the Vessel shall be performed every five years (or any other time as required by the classification society) by Charterer at Owner's expense.*

(emphasis added). The final sentence, which clearly references survey requirements of classification societies, directly contradicts the Singapore Rig Owners' strained interpretation of the language. As alleged in the Complaint, the ABS is the certification society that conducts the five-year and annual inspections (i.e., surveys) and issues the corresponding certificate. Compl. ¶¶ 132-35. Though it was Perforadora's obligation to make sure the Rigs stayed in class, as alleged in the Complaint, the activities required to do so were to be paid "*at the Owner's expense*." *Id.*

K. Plaintiffs State A Claim For Unjust Enrichment (Count 21)

Count 21 alleges unjust enrichment against the Singapore Rig Owners and Ad-Hoc Group. Specifically, they used illegal means to deprive Perforadora and Integradora of the Rigs and pre-paid expenses for the *Impetus* Rig.

To plead a claim for unjust enrichment, the Complaint must plead facts that support a plausible inference that "(1) the defendant was enriched; (2) at plaintiff's expense; and (3) equity and good conscience militate against permitting defendant to retain what plaintiff is seeking to recover." *Briarpatch Ltd., L.P. v. Phoenix Pictures, Inc.*, 373 F.3d 296, 306 (2d Cir. 2004). Ad-Hoc Defendants (Br. 81-82) and Singapore Rig Owners (Br. 51-52) argue that the Complaint fails to state claim for unjust enrichment because (1) the claim is duplicative of other tort and contract claims; and (2) the Singapore Rig Owners had a legal right to take over the Rigs. Both arguments are meritless.

First, the unjust enrichment claim cannot be dismissed as duplicative. To begin with, the elements of tortious interference do not duplicate unjust enrichment, and thus the claim cannot be dismissed as duplicative. *See Nuss v. Sabad*, 7:10-CV-0279(LEK/TWD), 2016 WL 4098606, at *11 (N.D.N.Y. July 28, 2016) (holding that an unjust enrichment claim is not duplicative if a "reasonable trier of fact could find unjust enrichment . . . without establishing all the elements for one of [the plaintiff's] claims sounding in law"); *see also McCracken v. Verisma Sys., Inc.*, No. 6:14-CV-06248(MAT), 2017 WL 2080279, at *8 (W.D.N.Y. May 15, 2017), *reconsideration denied*, No. 6:14-CV-06248(MAT), 2018 WL 4095104 (W.D.N.Y. Aug. 28, 2018) (same). As for the claim of breach of contract, that is obviously not duplicative as to the Ad-Hoc Defendants, who are not being sued for breach. As for the Singapore Rig Owners, the claim for breach does not duplicate the claim for unjust enrichment because it is based on other conduct (i.e., the claim for breach is premised on the Singapore Rig Owners failure to pay the

Reimbursement Costs while the claim for unjust enrichment is premised on the Singapore Rig Owners collusion with the Ad-Hoc Defendants to take the Rigs), leading to other damages than at issue for the breach of contract claim (i.e., Reimbursement Costs versus damages). *See* Compl. ¶¶ 547-550, 575-579.

Second, the Complaint alleges that the Singapore Rig Owners and Ad-Hoc Group used illegal means to deprive Perforadora and Integradora of the Rigs. The Singapore Rig Owners argue that, because they have always been the owners of the Rigs, there can be no unjust enrichment by their possession of them. However, the Complaint alleges that the Ad-Hoc Group illegally took control of the Singapore Rig Owners, removing them (and thus the Rigs) from Integradora's control by improperly declaring an event of default and purporting to exercise the share charge[66] in violation of Mexican bankruptcy law. Compl. ¶¶ 205, 254-55. Thus, the Bondholders were unjustly enriched by taking the Singapore Rig Owners, and by extension, the Rigs, away from Integradora.

Further, both the Ad-Hoc Defendants (Br. 82) and the Singapore Rig Owners (Br. 52) argue that the Singapore Rig Owners, controlled by the Bondholders, cannot have been unjustly enriched because the *Concurso* Court ordered the return of the Rigs to them in May of 2019. However, that decision was a consequence of the Ad-Hoc Defendants' scheme. As the opinion the Ad-Hoc Group relies on makes clear, the *Concurso* Court ordered Perforadora to hand the Rigs back not because the Singapore Rig Owners had superior possession rights (they did not under the existing Bareboat Charters), but for the simple and practical reason that Perforadora could no longer afford to maintain the Rigs. *See* Clareman Decl., Ex. 36-T, at 20-23. Of course,

[66] The share charge, which is equivalent to a pledge of stock, was granted by Integradora to Nordic Trustee over Integradora's shares in Oro Negro Drilling, which includes Integradora's authorization to Nordic Trustee to replace, if certain conditions are met, Oro Negro Drilling's directors. Compl. ¶ 113.

as set forth in the Complaint, Perforadora was only unable to maintain the Rigs because the Ad-Hoc Group and its co-conspirators had cut off its access to essential funds. Compl. ¶¶ 270-71, 309, 441-442. This at the very least raises a factual question as to whether there was unjust enrichment. *See A.V.E.L.A.*, 131 F. Supp. 3d at 208 (a challenge to allegation in complaint "raises a question of fact that cannot be resolved on a motion to dismiss").

The Complaint also alleges unjust enrichment against the Singapore Rig Owners based on pre-paid expenses for the *Impetus*. The Singapore Rig Owners argue that they did not receive anything of value from Perforadora. However, the Complaint alleges that the Singapore Rig Owners received over USD 7 million from Perforadora related to expenses incurred for the *Impetus* rig, which the Singapore Rig Owners now owe to Perforadora.[67] Compl. ¶ 138. In light of the egregious actions of the Ad-Hoc Group and Singapore Rig Owners to dispossess Oro Negro of all its assets, it is clear that Oro Negro did not enjoy the fruits of these expenses. Oro Negro has been deprived of the Rigs and use of the same, and its prospect of future business relations with the Singapore Rig Owners and Pemex destroyed by the interference of the Ad-Hoc Group. "[E]quity and good conscience" demand that Perforadora recover these expenses, *Briarpatch Ltd.*, 373 F.3d at 306, and any argument to the contrary merely raises a factual dispute that cannot be resolved on the pleadings, *see A.V.E.L.A.*, 131 F. Supp. 3d at 208.

VI. IN THE ALTERNATIVE, PLAINTIFFS STATE CLAIMS UNDER MEXICAN LAW (COUNTS 5-8, 10-11 AND 15-16)

Counts 5-8, 10-11, and 15-16 of the Complaint allege violations of Mexican law against all Defendants. In particular, the Complaint alleges that Defendants violated Mexican laws and

[67] While the *Impetus* costs are not listed under Count 21, it is clear from the facts alleged that Plaintiffs seek to recover these sums from the Singapore Rig Owners, who were never entitled to them. The Singapore Rig Owners thus have adequate notice of the claims against them. However, if the court concludes this formal defect is fatal to the underlying claim, Plaintiffs respectfully request leave to amend the Complaint.

good customs by interfering in its reorganization, abusing the criminal process, and causing the termination of Oro Negro's contracts.

The Complaint alleges violations of the Mexican general tort statute based on myriad wrongful acts of Defendants (Counts 5-8, 10-11 and 15-16). Mexican tort law, in contrast to U.S. common law, does not recognize particular types of torts that may give rise to liability. Rather, Mexican law recognizes a general rule of liability for wrongs under a broad tort statute. *See* Lopez Decl. ¶ 33.

México is a civil law state, meaning that codified statutes control, while court decisions have limited to no precedential value. *See* Lopez Decl. ¶ 8. As the Second Circuit explained, "[c]ivil law codes tend to be much more general and encompass a broader range of circumstances than do common law statutes. . . . A civil code is not a list of special rules for particular situations; it is rather a body of general principles carefully arranged and closely integrated." *Curley v. AMR Corp.*, 153 F.3d 5, 14 (2d Cir. 1998) (quoting Margarita Trevino Balli and David S. Coale, *Torts and Divorce: A Comparison of Texas and the Mexican Federal District*, 11 Conn. J. Int'l L. 29, 42 (1995)). Here, Article 1910 provides:

> Whoever, by acting illicitly or against the good customs and habits, causes damage to another shall be obligated to compensate him unless he can prove that the damage was caused as a result of the fault or inexcusable negligence of the victim.

Thus, liability may lie for ***either*** the violation of a statute (i.e., acting illicitly) ***or*** actions "against . . . good customs and habits." *Id.*; Lopez Decl. ¶ 35; *see also* Asali Decl. ¶ 20 ("An act against good custom is one that contravenes morals accepted in a given place and time, which is within the judge's discretion to determine").

Defendants argue primarily that Mexican law does not recognize claims for the specific common law torts of tortious interference, interference with a business reorganization, or abuse

of process. In addition, the Ad-Hoc Defendants argue (Br. 61) that "reference to 'acting illegally or against good customs' provides for civil liability for conduct that otherwise violates Mexican statutory law." However, as explained above, their emphasis on specific causes of action is misplaced. While Mexican law does not recognize the precise cause of action for tortious interference in contractual relations, Defendants' conduct—including their interfering with contractual rights and with Oro Negro's reorganization, and their gross manipulation and misuse of the Mexican criminal process—violates both specific statutes and "good customs and habits" and is therefore actionable under Article 1910.[68] Moreover, the Second Circuit has expressly refuted the suggestion that there must be a statutory violation, and recognized that a violation of good customs would also suffice: "As is apparent, … an illicit act may be a violation of 'good customs' *as well as* a violation of a statute or administrative regulation." *Curley* , 153 F.3d at 14 (emphasis added).

In particular, [redacted]

[68] The Seamex Defendants argue (Br. 12) that Plaintiffs' "label" for the claim is not controlling, but it is *Defendants* who are trying to put a label of "tortious interference" on Plaintiffs' Mexican law claims, and then argue that there is no such claim under Mexican law. The question, however, is whether the particular conduct here underlying the tortious interference (as well as other conduct) violates Article 1910, even if tortious interference would not necessarily give rise to a claim under Mexican law. And as set forth below, the facts alleged support a violation of Article 1910.

[redacted] (7) instigated numerous criminal proceedings against Oro Negro with the help and agreement of, and in the name of, the Singapore Rig Owners.

A. Violations of the *Ley de Concursos Mercantiles*

Much of this conduct was in direct violation of the Mexican *Ley de Concursos Mercantiles*. The *Ley de Concursos Mercantiles* states that it is in the public interest to "preserve businesses and avoid that the generalized failure to pay debts places the viability of [businesses] at risk." *See Ley de Concursos Mercantiles*, Art. 1; Lopez Decl. ¶ 41. It also states that, during the *concurso* process, "there cannot be any foreclosure or execution against the assets if the Merchant." *See Ley de Concursos Mercantiles*, Art. 65; Lopez Decl. ¶ 42. Defendants' conduct was aimed specifically at the destruction of Oro Negro's viability, and directly sought to foreclose on the Bareboat Charters, and execute on (and, failing that, limit) Oro Negro's access to Oro Negro's own assets. The Complaint also alleges that Defendants took repeated actions to take over Oro Negro's Rigs (*i.e.*, dispossess it of its assets) and deprive it of cash. These allegations are more than sufficient to allege a violation of the *Ley de Concursos Mercantiles*, as well as actions "against good customs," as explained *infra* Section VI.C.

B. Violations of Mexican Criminal Law

Plaintiffs also allege violations of Mexican criminal law to support a claim under Article 1910. Ad-Hoc Defendants argue (Br. 65) that use of the Mexican criminal process is legally protected in México, but Plaintiffs are not claiming tort liability based on the filing of legitimate criminal complaints.[69] Rather, Plaintiffs rely on wrongful conduct in violation of Mexican statutes—in particular, the pursuit of criminal proceedings through the fabrication of evidence.

[69] Defendants again conflate abuse of process with malicious prosecution, arguing that the latter can only be brought after a favorable verdict. As explained *supra* Section IV.D the Complaint does not allege malicious prosecution or any torts, under Mexican law or otherwise, premised thereon.

Presenting a false document to a government authority, including the courts, is a violation of the Mexican Criminal Code. Lopez Dec. ¶ 45. As the Ad-Hoc Defendants' expert points out, Mexican law recognizes that the filing of a false complaint or false evidence does support liability under Article 1910. *See* Zamora Decl. ¶ 64.[70]

Contrary to the Ad-Hoc Group's assertion (Br. 65 n. 49), the Complaint sets forth in painstaking detail the pursuit of criminal proceedings through the fabrication of evidence and why the evidence was false. As the Complaint alleges, (1) the circumstances in which the "evidence" of the sham companies arose—a lone spreadsheet suddenly "found" within thousands of other documents—is highly dubious; (2) the evidence is nonsensical, as Perforadora never invoiced any entity but Pemex; (3) the evidence has been discredited not only by Oro Negro's own internal investigation, but also by the Mexican tax authority from whence it supposedly originated; (4) the evidence was contradicted by other spreadsheets on the same compact disk; and (5) the Ad-Hoc Group should have known and did know no crime had been committed when it filed the criminal actions. Compl. ¶¶ 349-67.

The Ad-Hoc Defendants' only argument to counter this point is that Plaintiffs fail to provide definitive proof that the evidence is false. Such proof is not required at the motion to dismiss stage under settled U.S. procedural law, *Harris*, 572 F.3d at 71–72, which governs claims that are subject to Mexican substantive law. *See Bournias v. Atl. Mar. Co.*, 220 F.2d 152, 154 (2d Cir. 1955) ("In actions where the rights of the parties are grounded upon the law of jurisdictions other than the forum, it is a well-settled conflict-of-laws rule that the forum will

[70] As the Ad-Hoc Group's expert point out, additional liability may lie under Article 1916 of the Mexican Civil Code. However, any violation of this code may also form the basis for liability under Article 1910. Lopez Decl. ¶ 45.

apply the foreign substantive law, but will follow its own rules of procedure."); *In re Hellas Telecomms (Luxembourg) II SCA*, 535 B.R. 543, 566 (Bankr. S.D.N.Y. 2015) (same).

C. Violations of Good Customs

Additionally, the actions of Defendants in sabotaging Oro Negro's business and restructuring and in instigating criminal proceedings are in violation of "good customs."

The Mexican Supreme Court has explained:

> Anything that hurts morality is contrary to good customs, and jurisprudence has slowly considered that there is a criterion of morality in the society and that the social environment constitutes the source of good custom. Therefore, it is not necessary to give a precise definition of *'good customs*' because no legislature is going to do this but leave it to the wisdom of the courts.[71]

The Second Circuit in *Curley* recognized the breadth of torts arising out of violations of "good customs." 153 F.3d at 14. *Curley* explained that "the potential for liability [under Article 1910] is somewhat open-ended." *Id.* at 14-15. Accordingly, assessing a claim under Article 1910 for a violation of good customs "requires a flexible approach to the admissibility of evidence, the method of proof, and discretion of the trier of fact. In theory, good customs could be proven by as many evidentiary devices as may be concocted by a fertile imagination, from the interpretation of theological or religious injunctions on bad behavior to anthropological, sociological or psychological expert testimony on prevailing attitudes." *Id.* (quoting Boris Kozolchyk and Martin L. Ziontz, *A Negligence Action in México: An Introduction to the Application of Mexican Law in the United States*, 7 Ariz. J. Int'l & Com. L. 1, 11 (1989)).

The actions to scuttle Oro Negro's business and restructuring contravene the public purpose in favor of facilitating orderly reorganizations. Lopez Decl. ¶ 43. The Ad-Hoc Group

[71] *See* "Illiades Viuda de Ize, Elena," 120 S.J.F. 1821 (5a 6poca 1954), *as translated in Moral Damages in México*, 36 Univ. of Miami Inter-Am. L. Rev. 183, 191 (2004). Lopez Decl. 35.

intentionally sought to take over the Rigs by forcing the company into financial distress that would certainly cause the company ultimately to default. *See* Compl. ¶¶ 228-30, 261, 411, 434, 464. Notably, no court has ever denied that interference with reorganization can give rise to tort liability in México. Lopez Decl. ¶ 44. To do so would contravene public policy in favor of orderly reorganization, as set forth in the LCM. Lopez Decl. ¶ 43. And the actions of Defendants are clearly contrary to any conceivable good social custom.

Furthermore, when Oro Negro attempted an organized restructuring of its debt obligations, Defendants took every step to frustrate that reorganization. *First*, [redacted] *Third*, when the *Concurso* Court imposed injunctions to protect Oro Negro (similar to the automatic stay in Chapter 11), the Ad-Hoc Group in conjunction with the Singapore Rig Owners and their directors initiated litigation in three different countries in an effort to circumvent the Mexican restructuring proceeding. *Fourth*, when the Ad-Hoc Group was not able to secure a judgment in any jurisdiction allowing them to take over the Rigs, they initiated criminal proceedings against Oro Negro and its executives based on falsified evidence. [redacted] *Sixth*, the efforts of the Ad-Hoc Group and the Singapore Rig Owners to forcibly seize the Rigs by attempting to land a

[72] The Seamex Defendants dispute (Br. 14) their role in the events, but as explained *supra* Section V.G., the factual allegations more than suffice to establish their participation in the conspiracy and unlawful acts.

squadron of helicopters on the Rigs put Oro Negro, its employees and its assets at risk. *Seventh*, through the criminal actions, they not only converted a commercial dispute into a criminal proceeding against Oro Negro but brought into those criminal proceedings personal actions against individual executives, directors and employees of Oro Negro.

This conduct culminated in the destruction of Oro Negro's business. And in doing so, Defendants displayed reckless disregard for social mores, intentionally targeting individuals with criminal prosecution to exert pressure on Oro Negro in order to achieve purely commercial goals. At a minimum, this raises a factual issue regarding whether there is a violation of Article 1910 under the flexible standard recognized in *Curley*, 153 F.3d at 14.

D. The Complaint Adequately Alleges Damages Under Mexican Law

The Singapore Defendants (Br. 31) and the Seamex Defendants (Br. 15-16) assert that the Complaint does not plead damages causation adequately under Mexican law, and that Mexican law does not allow recovery of certain categories of damages pled, including punitive damages.

However, as set forth in detail in the Complaint, the conduct of each Defendant directly precipitated Oro Negro's collapse by causing (1) Pemex to cancel Oro Negro's Contracts and (2) Oro Negro to run out of money such that it was declared in liquidation and forced to hand over the Rigs. Compl. ¶¶ 309, 403-408, 413-414, 432-433. Simply put, Plaintiffs allege damages resulting from the destruction of their business. It need not prove the exact amount now as to each Defendant. *See In re Food Mgmt. Grp., LLC*, 380 B.R. 677, 700 (Bankr. S.D.N.Y. 2008) ("On a Rule 12(b)(6) motion, the Court need only address whether the facts alleged in the complaint demonstrate any damages to the [plaintiff]. Plaintiff need not plead a concrete amount of damages to survive a motion to dismiss.").

Further, Mexican law *does* permit recovery of moral damages (*daños morales*), an analog to punitive damages for certain tort claims. Lopez Decl. ¶ 46. While there is no binding

precedent mandating an award of moral damages, the concept is relatively new to Mexican law, and there is no authority prohibiting their award. *Id.* ¶ 47.

VII. PLAINTIFFS STATE A CLAIM FOR VIOLATION OF 11 U.S.C. § 1520 AND THE COMITY ORDER

The Complaint alleges that the Ad-Hoc Group Defendants and the Singapore Defendants violated 11 U.S.C. § 1520(a)(1) and the Comity Order by foreclosing on the Rigs and depriving Perforadora of its right to "full possession" of the Rigs for an improper motive.

Plaintiffs state a claim against the Ad-Hoc Defendants and Singapore Defendants for violation of 11 U.S.C. § 1520 and the Comity Order because section 1520(a)(1) and the Comity Order automatically stayed all actions against the property of Perforadora located in the United States.

A. Plaintiffs' Rights Are Located Within The Territorial Jurisdiction Of The United States

The Singapore Rig Owners argue (Br. 33) that the stay did not apply to Plaintiffs' possession of the Rigs under the Bareboat Charters because Plaintiffs' possession rights are not located in the United States. But the situs of Plaintiffs' rights under the Charters is within the territorial jurisdiction of the United States because the Bareboat Charters contain forum selection clauses requiring litigation of disputes arising out of the Charters in this District and under U.S. maritime law. As this Court explained in *In re Berau Capital Res. Pte Ltd*, 540 B.R. 80, 83 (Bankr. S.D.N.Y. 2015), such a forum selection clause renders the intangible property within the United States because "[i]t would be ironic if a foreign debtor's creditors could sue to enforce the debt in New York, but in the event of a foreign insolvency proceeding, the foreign representative could not file and obtain protection under Chapter 15 from a New York bankruptcy court." *Id.* (concluding "the indenture is property of [debtor] in the United States"); *see also In re U.S. Steel Canada Inc.*, 571 B.R. 600, 610 (Bankr. S.D.N.Y. 2017) ("[D]ebt subject to a New York

governing law clause and a New York forum selection clause constitutes property in the United States."); *In re Inversora Eléctrica de Buenos Aires S.A.*, 560 B.R. 650, 655 (Bankr. S.D.N.Y. 2016) (same).[73]

Because Plaintiffs' rights under the Bareboat Charters were enforceable only in this District, Plaintiffs' rights under those contracts exist in this forum. *In re Octaviar*, 511 B.R. at 372 (rejecting the argument that "'potential' causes of action in the United States cannot satisfy the requirements" and concluding "that because [debtor's] claims and causes of action against Drawbridge constitute property located in the United States, the Foreign Representatives satisfy the eligibility requirements"); *see also In re PT Bakrie Telecom Tbk*, 601 B.R. 707, 714-15 (Bankr. S.D.N.Y. 2019) ("Examples of property sufficient to satisfy the requirement include funds held in a retainer account in the possession of the foreign representative's counsel, deposits in a New York bank account, and causes of action with a situs in New York owned by the

[73] Defendants attempt to distinguish *In re Berau* and *U.S. Steel* because the debt in those cases contained a New York choice of law provision, while the Bareboat Charters only specify U.S. maritime law applies. Singapore Rig Owners Br. 19 n.9. This is a distinction without difference; that the parties contracted for U.S. maritime law to govern evinces just as much of a connection to the territory of the United States as would a New York choice of law provision. Moreover, the Bareboat Charters are admiralty contracts, and even state courts must apply federal admiralty law in admiralty disputes. *See Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 223 (1986) ("[T]he extent to which state law may be used to remedy maritime injuries is constrained by a so-called 'reverse-*Erie*' doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards."). Thus, the governing law would be the same even if the Bareboat Charters contained New York choice of law provisions instead of U.S. maritime choice of law provisions. In any event, that Oro Negro's causes of action to enforce the Bareboat Charters were located in this Court is sufficient to conclude that this forum is at least one of the situses of Oro Negro's property rights. *See In re Octaviar Admin. Pty Ltd*, 511 B.R. 361, 372 (Bankr. S.D.N.Y. 2014).

The sole case cited by the Singapore Rig Owners (Br. 19 n.9), for the proposition that New York choice of law clauses are required for the intangible property right to exist in the territorial jurisdiction of the United States contained *no* choice of law provision. *In re B.C.I. Finances Pty Ltd.*, 583 B.R. 288, 297 (Bankr. S.D.N.Y. 2018). And that case nonetheless concluded the claims are located in New York because, in part, "where a court has both subject matter and personal jurisdiction, the claim subject to the litigation is present in that court." *Id.* at 303. Similarly, this Court is the correct forum as evidenced by both the choice of forum provision and the Singapore Rig Owners' decision to litigate here in March 2018. Compl. ¶ 285 (noting the Singapore Rig Owners sought "an order compelling Perforadora to deliver the Rigs to them" in the Southern District of New York).

foreign debtor."). Defendants' violation of the Chapter 15 stay thus affected property located in the United States.

B. Defendants Violated The Automatic Stay Under 11 U.S.C. § 1520

The Singapore Rig Owners argue (Br. 33-38) they did not violate the Chapter 15 stay because they seized the Rigs under a restitution order issued as part of a criminal proceeding, the Rigs Take-Over Order. "Upon recognition of a foreign proceeding that is a foreign main proceeding . . . sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States." 11 U.S.C. § 1520(a)(1). And Section 362(b)(1) exempts from the automatic stay "the commencement or continuation of a criminal action or proceeding against the debtor[.]" However, "[t]he party asserting an exception to the automatic stay bears the burden of proving that the exception applies[,]" *In re Best Payphones, Inc.*, 01-15472 (SMB), 2016 WL 164900, at *11 (Bankr. S.D.N.Y. Jan. 13, 2016), and the exception is inapplicable here on five separate grounds.

First, multiple Mexican courts expressly prohibited the seizure of the Rigs, and the seizure, in contravention to these orders, was, therefore, not a legal exercise of state power over criminal proceedings. Specifically, the seizure violated not only the *Concurso* Court's October 5 and October 11 orders but also on October 24, 2018, the *Concurso* Court ordered Defendants to cease the unlawful actions and required the withdrawal of the Rigs Take-Over Order. Compl. ¶¶ 386, 389. In addition, on October 26, 2018, Oro Negro obtained an *amparo* order, a remedy for the protection of constitutional rights, staying the Rigs Take-Over Order. *Id.* ¶ 390. Defendants' seizure of the Rigs was therefore unlawful under Mexican law as established by four different judicial orders, and cannot constitute a valid "commencement or continuation of a criminal action or proceeding" under 11 U.S.C. § 362(b)(1).

Second, the seizure was not carried out by state security forces,. The sole Mexican police officer involved left the same day the helicopter that attempted to seize the Rigs landed. Compl. ¶¶ 382-83. Instead, [redacted] and one of Defendants' attorneys in México attempted to seize the *Decus* by remaining on it for nearly a week. *Id.* ¶ 383. These actions plainly violate the automatic stay's prohibition on any creditor seizing property of the estate. 11 U.S.C. § 362(a). Defendants cite no cases in which private actors seizing property in violation of foreign law are exempt from a Chapter 15 automatic stay. To the contrary, the cases they cite presume restitution orders that "further the penal goals of the state," Singapore Rig Owners Br. 36, and "function to benefit society as a whole." *Id.* (citing *Kelly v. Robinson*, 479 U.S. 36, 52 (1986)). Defendants' seizure of the Rigs in violation Mexican law neither advances legitimate penal goals nor benefits society at large.

Third, even if permitted under a Mexican court order, Defendants' seizure of the Rigs was not required. The purported restitution order did not *require* Defendants and their agents to seize the Rigs, it merely "authorized the Singapore Rig Owners, as restitution, to take possession of the Rigs." Compl. ¶ 372. And "[i]t is well settled that a creditor has an affirmative duty under § 362 to take the necessary steps to discontinue its collection activities against a debtor." *In re Wright,* 328 B.R. 660, 663 (Bankr. E.D.N.Y. 2005). The Singapore Rig Owners failed to fulfill that affirmative duty to discontinue their collection activities even assuming *arguendo* the seizures were authorized by Mexican courts (they were not) because the seizures were not mandatory.

That the seizure was both non-mandatory and conducted by private parties distinguishes this case from those the Singapore Rig Owners argue (Br. 35-36) that restitution orders are not dischargeable in bankruptcy. *In re First Texas Petroleum, Inc.*, 52 B.R. 322, 329 (Bankr. N.D.

Tex. 1985), addressed "restitution [] ordered by the state court judge as a condition of probation," and carried out by the state. *In re Ritter*, No. 05-36150 (CGM), 2006 WL 3065518, at *5 (Bankr. S.D.N.Y. Oct. 27, 2006), similarly concerned a mandatory restitution order that was part of a criminal sentence imposed by the state, not private entities. But Plaintiffs in this case have not been charged or convicted of any crime, much less sentenced.

Defendants also cite *United States v. Colasuonno*, 697 F.3d 164, 175 (2d Cir. 2012), for the proposition that the seizure of the Rigs is restitution, which § 362(b)(1) exempts from automatic stays because "restitution compensates a crime victim, to the extent money can do so, for actual injuries sustained, whether to body or property, from a criminal offense." That case concerned a criminally-convicted debtor who violated the terms of his probation, resulting in the federal government seeking restitution. *Id.* The post-conviction restitution ordered in that case is not comparable to a purported restitution order obtained *ex parte* against Oro Negro without an adjudication on the merits and enforced by private parties. Nor can the Singapore Rig Owners avail themselves of the rule outlined in *Colasuonno* when they do not claim the restitution compensates them as "crime victims[s]" for "actual injuries sustained . . . from a criminal offense" committed by Plaintiffs. *Id.* Accordingly, any claim that their seizure of the Rigs serves a restitution function is misplaced, and this is not a case in which the 362(b)(1) exception should apply even if it were available.

Fourth, even if the seizure were conducted pursuant to a criminal proceeding (it was not), courts in this circuit have recognized "the majority rule" that excludes improperly motivated criminal proceedings from the Section 362(b)(1) exception to the automatic stay. *In re Gary V. Otten; Gary V. Otten v. Majesty Used Cars, Inc., Robert Semitekolos*, No. 10-74946-AST, 2013 WL 1881736, at *9 (Bankr. E.D.N.Y. May 3, 2013). "[T]he motivation of a creditor whose debt

was discharged in seeking prosecution of the debtor may be relevant when it is possible to argue that no crime was committed, or that the process under which the debtor is being prosecuted is tainted by bad faith, or a criminal charge is threatened solely to coerce payment of the discharged debt." *Id.* (quotations and alteration omitted). *In re Pearce*, 400 B.R. 126, 133 (N.D. Iowa 2010), for example, held a creditor violated the automatic stay by contacting police and a prosecutor with the primary intent to collect on a debt through restitution. And even in Circuits that have rejected the "principal motivation" test described above, a "[d]ebtor's complaints regarding [c]reditors' purported use of the criminal process to collect a debt are only relevant if [d]ebtor can show that the entire proceeding was brought in bad faith." *In re Cantin*, No. 15-28505-BKC-MAM, 2019 WL 2306620, at *14 (Bankr. S.D. Fla. May 30, 2019).

Plaintiffs here adequately allege improper motivation under either standard. Plaintiffs plausibly allege that the motivation of Defendants in their "relentless campaign to criminally prosecute Integradora, Perforadora, and their directors, executives and employees, including Gil, based on fabricated evidence" was to forcibly seize control of the Rigs. Compl. ¶¶ 306-10. Plaintiffs further allege that Defendants were fully aware no crime was committed. *Id.* ¶¶ 329 (knowledge of falsity of mismanaging funds criminal complaint), 343-47 (knowledge of falsity of misleading public official criminal complaint); 349-67 (knowledge of falsity of sham company criminal complaint); and 394-97 (knowledge of falsity of promptly-dismissed fourth criminal complaint). Moreover, Plaintiffs allege the criminal charges were brought solely to coerce Plaintiffs by "suffocating Oro Negro and depriving it of its ability to maintain the Rigs." *Id.* ¶ 310. Defendants' seizure of the Rigs therefore would not fall under the criminal proceeding exception if that exception were applicable because the criminal proceeding was improperly motivated solely by Defendants' efforts to seize the Rigs.

Fifth, even if Defendants were correct that their seizure of the Rigs occurred pursuant to a properly-motivated criminal proceeding that required them to obtain restitution, their actions would still not fall within the exception because the policy concerns justifying the exception are not present here. "Excluding state criminal proceedings from the stay and the discharge injunction reflects a respect for federalism." *In re Gary V. Otten*, 2013 WL 1881736, at *7 (quotations and alteration omitted). But there are no federalism concerns at play where the purported criminal proceeding takes places in a foreign forum. And to the extent comity displaces federalism as a relevant concern in Chapter 15 cases involving foreign proceedings, it weighs against finding applicable the Section 362(b)(1) exception because *two* Mexican courts ruled the seizure unlawful. Compl. ¶ 390. Defendants' seizure of the Rigs therefore violated the automatic stay.

Finally, Plaintiffs' construction of Section 362(b)(1) does not leave Defendants without mechanisms for relief. If Defendants believed they possessed legitimate justifications for the seizure of the Rigs, Defendants should have sought relief pursuant to Section 362(d), which authorizes a party in interest to request relief from the stay with regards to particular claims on the debtor's estate. Assuming Defendants' claims on the Rigs were valid, they could have then proceeded with their actions for restitution. But Defendants did not seek any such relief from this Court or the *Concurso* Court.

C. Defendants Violated This Court's Comity Order

The Singapore Rig Owners argue (Br. 38-39) that they did not violate this Court's Comity Order because the Comity Order merely gave enforcement and recognition to the *Concurso* Court's October 5 and October 11 Orders, which did not order relief against the Rig Owners. Defendants are incorrect: the October 5 and October 11 Orders prohibited *any* interference with Perforadora's possession rights under the Bareboat Charters. Compl. ¶ 386.

Through the Comity Order, this Court thus adopted as its own the *Concurso* Court's October 5 and October 11 Orders. And this Court also issued a temporary restraining order ("TRO") to prohibit the Ad-Hoc Group and its agents from continuing their attempt to seize the Rigs. *Id.* ¶ 387. In light of that order, an October 24 *Concurso* Court order explicitly directed at the Singapore Rig Owners to cease their unlawful actions to seize the Rigs, *id.* ¶ 389, and an *amparo* order staying the order authorizing seizure of the Rigs, *id.*¶ 390, Defendants violated at least three judicial orders in their attempts to seize the Rigs. Contrary to the Singapore Rig Owners' suggestion (Br. 39), Plaintiffs do not ask this Court to "issue an injunction against the Rig Owners" or "enjoin Mexican criminal proceedings." This Court and numerous Mexican courts already provided the injunctive relief sought. *Id.* ¶¶ 386-90. But Defendants ignored those orders, and Plaintiffs properly seek compensation under Section 1521(a)(7).

VIII. THIS COURT HAS JURISDICTION OVER THE ABUSE OF PROCESS CLAIMS AND PLAINTIFFS DO NOT LACK STANDING

A. Bankruptcy Jurisdiction Exists Over All Plaintiffs' Claims

Section 1334 grants bankruptcy courts by referral "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). "[L]egislative history makes it clear that section 1334(b), taken as a whole, constitutes an extraordinarily broad grant of jurisdiction to the Article III District Court." *In re Residential Capital, LLC*, 489 B.R. 36, 44 (Bankr. S.D.N.Y. 2013) (citation omitted). And "[t]he scope of 'related to' bankruptcy jurisdiction has been broadly interpreted by the Second Circuit." *City of Ann Arbor Emps. Ret. Sys. v. Citigroup Mortg. Loan Trust Inc.,* 572 F. Supp. 2d 314, 317 (E.D.N.Y. 2008). To determine "related to" jurisdiction, this Court assesses whether the "outcome" of the litigation "might have any 'conceivable effect' on the bankruptcy estate." *In re*

Cuyahoga Equip. Corp., 980 F.2d 110, 114 (2d Cir. 1992). "If that question is answered affirmatively, the litigation falls within the 'related to' jurisdiction of the bankruptcy court." *Id.*

The conceivable effect standard constitutes an expansive grant of jurisdiction. "In the absence of limiting guidance on the meaning of 'conceivable effect,' courts have found that even an 'unlikely' possibility that the bankruptcy estate's rights might be altered satisfies the 'conceivable effect' test." *BGC Partners, Inc. v. Avison Young (Canada), Inc.*, 919 F. Supp. 2d 310, 318-19 (S.D.N.Y. 2013); *see also In re Extended Stay Inc.*, 435 B.R. 139, 150 (S.D.N.Y. 2010) ("However unlikely it might be . . . the prospect of an effect . . . is conceivable and is . . . sufficient to render [the] adversary proceeding 'related to' Debtors' bankruptcy proceedings within the meaning of 28 U.S.C. § 1334(b)."). "Bankruptcy jurisdiction will exist so long as it is possible that the proceeding may affect the debtor's rights or the administration of the estate." *Winstar Holdings, LLC v. Blackstone Grp. L.P.*, 2007 WL 4323003, at *1 (S.D.N.Y. Dec. 10, 2007); *see also In re Residential Capital, LLC*, 489 B.R. 36, 44 (Bankr. S.D.N.Y. 2013) ("[E]ven where suit may ultimately have no effect on the bankruptcy, jurisdiction is established where a court cannot conclude, on the facts before it, that it will have no conceivable effect.") (citation and quotation omitted). And "related to" subject matter jurisdiction attaches to "[e]very

conceivable interest of the debtor, future, nonpossessory, contingent, speculative, and derivative." *In re Bernard L. Madoff Inv. Secs. LLC*, 740 F.3d 81, 88 (2d Cir. 2014).[74]

Ad-Hoc Defendants argue (Br. 83-85) that this Court does not have bankruptcy jurisdiction over Counts 9-11 (alleging abuse of process under New York law, intentional torts under Mexican law, and negligent torts under Mexican law, all against the Ad-Hoc Group Defendants and Singapore Defendants) because they are brought by the foreign representative and Gil in his personal capacity. But recovery of monetary damages under the claims brought by the foreign representative would augment the estate, thereby vesting this Court with "related to" bankruptcy jurisdiction. Any damages recovered under claims brought by Gil as foreign representative would augment the estate because the debtor entities, Integradora and Perforadora, would be entitled to the proceeds of the foreign representative's claims. *See In re Octaviar Admin. Pty Ltd.*, 511 B.R. 361, 369-371 (Bankr. S.D.N.Y. 2014) (concluding claims and causes of action brought by foreign representative are property of the foreign debtor in the United States); *In re Containership Co. (TCC) A/S*, 466 B.R. 219, 233 (Bankr. S.D.N.Y. 2012) ("[T]hese are adversary actions by a foreign representative to augment the size of the estate.").

As *In re Hellas Telecommunications (Luxembourg) II SCA*, 524 B.R. 488, 515 (Bankr. S.D.N.Y.), *adhered to*, 526 B.R. 499 (Bankr. S.D.N.Y. 2015), explained: "[t]he outcome of this

[74] Defendants' citation to *Matter of Paso Del Norte Oil Co.*, 755 F.2d 421, 425 (5th Cir. 1985), for the proposition that "exercising jurisdiction over a collateral controversy is improper where it is 'possible' to administer the estate without resolving the controversy" misstates the law. It is true that "[a] court of bankruptcy has no power to entertain collateral disputes between third parties that do not involve the bankrupt or its property," *id.* at 424, but that is clearly not the case here. The foreign representative seeks to recover on behalf of the foreign debtor's estate, and any recovery will therefore augment the *res* of the bankruptcy estate, ensuring "related to" jurisdiction. *See In re Octaviar*, 511 B.R. at 369-371. Moreover, the foreign representative's claims arise out of the same tortious conduct as the entity Plaintiffs' other claims. "The existence of strong interconnections between the third party action and the bankruptcy has been cited frequently by courts in concluding that the third party litigation is related to the bankruptcy proceeding." *In re WorldCom, Inc. Sec. Litig.*, 293 B.R. 308, 321 (S.D.N.Y. 2003). That certain claims are brought in part by Gil in his personal capacity does not preclude jurisdiction. *Bgc Partners, Inc. v. Avison Young (Canada) Inc.*, 2015 WL 7251954, at *5 (N.D. Ill. Nov. 17, 2015) ("The debtor need not be a party in cases 'related to' a bankruptcy proceeding.") (citing *In re Teknek, LLC*, 563 F.3d 639, 648 (7th Cir. 2009)).

adversary proceeding would clearly have an effect on the Debtor's foreign estate, as it could potentially recover approximately €1 billion for the benefit of the estate. Notwithstanding that the Plaintiffs' claims are all state law claims brought in an adversary proceeding related to a Chapter 15 proceeding, this adversary proceeding is related to a case under title 11." The same is true of Counts 9-11 as brought by the foreign representative in this case, as any monetary recovery under those claims would become part of the debtor's foreign estate. *See Geltzer as Tr. of Estate of Michaux v. Riverbay Corp.*, 2019 WL 912504, at *2 (S.D.N.Y. Feb. 25, 2019) (finding a "personal injury lawsuit" brought by the trustee is "'related to' the bankruptcy proceeding . . . because any recovery from the . . . lawsuit will be furnished to the trustee . . . to be distributed consistent with the bankruptcy court's relevant orders, and as such may 'have an effect on the estate'") (citations omitted).

"Related to" jurisdiction also exists with regard to Counts 9-11 as brought by Gil in his personal capacity because the Defendants' conduct that gave rise to Gil's personal claims also gave rise to the foreign representative's claims. *See* Compl. ¶¶ 307, 310. "[S]o long as the estate at issue in a chapter 15 case, wherever located, may conceivably be affected by the action in question, that action is related to the chapter 15 case." *In re British Am. Ins. Co. Ltd.*, 488 B.R. 205, 223-24 (Bankr. S.D. Fla. 2013) ("There is no question that . . . this entire adversary proceeding[] falls within related to jurisdiction under section 1334(b)" because "[t]he outcome of this action . . . . could augment the recoveries of creditors of the debtor."). Adjudication of Gil's claims brought in his personal capacity could have a significant impact on the claims arising from the same conduct brought by the foreign representative, and such effects on the claims of the bankruptcy estate create "related to" jurisdiction. *See In re Sterling Optical Corp.*, 302 B.R. 792, 806 (Bankr. S.D.N.Y. 2003) (finding "related to" jurisdiction because "[t]here was a huge

overlap between the issues raised . . . in its adversary complaint" and "those before the Court," ensuring "findings in this adversary proceeding, by reason of res judicata, collateral estoppel, or some combination of the two would plainly be relevant" to the bankruptcy estate); *Private Capital Grp., LLC v. Cline*, No. 07CV4585 (ADS) (WDW), 2008 WL 11449284, at *3 (E.D.N.Y. Sept. 29, 2008) (finding related to jurisdiction exists because the findings of the court "could conceivably have an estoppel effect on the bankruptcy court's determination of the ownership issue" which "could result in the allowance or disallowance of" a particular claim, thus "having a direct and immediate impact on the bankruptcy estate").

Defendants' cases are readily distinguishable. *In re Shirley Duke Assocs.*, 611 F.2d 15, 18-19 (2d Cir. 1979) denied jurisdiction over a creditor's claim against a third party unrelated to the bankruptcy. Similarly, in *In re Parade Place, LLC*, 508 B.R. 863, 872 (Bankr. S.D.N.Y. 2014), the court lacked jurisdiction because the "claim could not have any conceivable effect on the bankruptcy estates." But Counts 9-11 in this case concern claims brought by the foreign representative of the debtor, arising out of the same alleged tortious conduct for which the debtor seeks compensation. And the Second Circuit has explained that the location of the estate abroad is wholly irrelevant to this Court's jurisdictional analysis. *Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 639 F.3d 572, 579 (2d Cir. 2011) ("In the context of § 1334(b), there is no need to

distinguish between estates administered principally in foreign forums and those administered principally in domestic forums.").[75]

Finally, even if Defendants were correct that this Court lacks subject matter jurisdiction under 28 U.S.C. § 1334(b) over Gil's personal claims (or any of Plaintiffs' other claims), this Court could exercise supplemental jurisdiction under 28 U.S.C. § 1367, which grants jurisdiction "over all other claims that are so related to claims in the action . . . that they form part of the same case or controversy[.]" The Second Circuit has recognized the "bankruptcy court had jurisdiction . . . under principles of supplemental jurisdiction" in a case involving a non-debtor's suit against a creditor. *In re Lionel Corp.*, 29 F.3d 88, 92 (2d Cir. 1994); *see also In re Cavalry Constr., Inc.*, 496 B.R. 106, 109 (S.D.N.Y. 2013) ("[T]his Court is bound by the Second Circuit's view of the matter, which is that bankruptcy courts may invoke the supplemental jurisdiction of § 1367.").

Because of the significant overlap between the conduct giving rise to Counts 9-11 and the conduct giving rise to Plaintiffs' remaining claims, supplemental jurisdiction is available: Counts 9-11 are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy[.]" 28 U.S.C. § 1367(a). Claims form part of the same case

[75] The Singapore Rig Owners (Br. 22-25) argue this Court lacks subject matter jurisdiction over all of Plaintiffs' claims because the debtor's estate is outside the United States. But the Second Circuit has expressly held the location of the debtor's estate is irrelevant to this Court's subject matter jurisdiction: "In the context of § 1334(b), there is no need to distinguish between estates administered principally in foreign forums and those administered principally in domestic forums." *Parmalat Capital Fin. Ltd*, 639 F.3d at 579. And *Parmalat* remains good law, contrary to the Singapore Rig Owners' unsubstantiated assertion that Chapter 15 redefined "related to" jurisdiction under Section 1334 to require *in rem* jurisdiction over property in the United States. This Court recently rejected an identical attempt to "engraft" the Chapter 15 "territorial limitation to the Second Circuit's ruling in *Parmalat*" because that argument "confuses subject matter jurisdiction over a proceeding with a court's *in rem* jurisdiction over property . . . . The *Parmalat* ruling—that the relevant estate for a foreign debtor is the foreign estate—is not limited to the recovery of U.S. assets; all that is required for the exercise of 'related to' jurisdiction is the satisfaction of the 'conceivable effect' test, nothing more." *In re Fairfield Sentry Ltd.*, No. 10-13164 (SMB), 2018 WL 3756343, at *8 (Bankr. S.D.N.Y. Aug. 6, 2018) (quotations and alteration omitted). In any event, Plaintiffs' claims *in this action* pursuant to a valid forum selection clause are property in the United States that can augment the debtor's estate, thereby creating subject matter jurisdiction in this Court. *See supra* VI(A).

or controversy if they "arise from the same common nucleus of operative fact." *Montefiore Med. Ctr. v. Teamsters Local 272*, 642 F.3d 321, 332 (2d Cir. 2011) (citing *United Mine Workers of Am. v. Gibbs,* 383 U.S. 715, 725 (1966)). And "the court should look to whether the evidence likely to be used in the specific case in addressing the federal claim is likely to substantially overlap that used to address the state-law claims." *BLT Rest. Grp. LLC v. Tourondel*, 855 F. Supp. 2d 4, 11 (S.D.N.Y. 2012).

Here, Plaintiffs' allegations concerning abuse of process (Counts 9-11) are inextricably linked with Plaintiffs' allegations concerning tortious interference and the Ad-Hoc Group Defendants' conspiracy: the purpose of the abuse of process was to "cause the destruction of Integradora and its subsidiaries, including cutting their access to cash and depriving them of the Rigs." Compl. ¶ 499. The facts that show the abuse of process also evince Defendants' tortious interference and related conspiracy, as the abuse of process was one mechanism by which the "Ad-Hoc Group Defendants and Singapore Defendants managed to seize all of Oro Negro's cash, suffocating Oro Negro and depriving it of its ability to maintain the Rigs, which ultimately allowed them to take over the Rigs." *Id.* ¶ 310.

Where the claims share "a common nucleus of operative fact," as in this case, the exercise of supplemental jurisdiction "is a favored and normal course of action." *Promisel v. First Am. Artificial Flowers, Inc.,* 943 F.2d 251, 254 (2d Cir. 1991) (citation omitted). And this case does not implicate any of the enumerated grounds for this court to decline to assert otherwise available supplemental jurisdiction. 28 U.S.C. § 1367(c). Counts 9-11 do not "present a novel or complex issue of State law," *id.*, as they assert abuse of process claims that New York courts routinely address, as has this court when applying New York state law. *See supra* Section IV.D. Nor do Counts 9-11 "substantially predominate" over the remaining claims, § 1367(c), as

they amount to only one of Plaintiffs' numerous claims because Counts 10 and 11 are pled in the alternative. Moreover, because "the evidence pertinent to the federal claim is likely to overlap substantially with the evidence relevant to the state-law claims, . . . the joint adjudication of these claims will promote judicial and cost efficiency." *BLT Rest. Grp.*, 855 F. Supp. 2d at 13. Accordingly, should this Court lack jurisdiction over Counts 9-11 under Section 1334(b), it should nonetheless exercise supplemental jurisdiction over these claims pursuant to Section 1367.

B. Plaintiffs Have Standing To Bring Claims Under Chapter 15

Ad-Hoc Defendants argue (Br. 85-86) that Gil does not have standing because he is no longer the foreign representative. But the current foreign representative may be substituted for Gil without consequence to Plaintiffs' claims. Under Fed. R. Bankr. P. 2012(b), the "successor is automatically substituted as a party in any pending action, proceeding, or matter" in the event that "a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case." The same applies for foreign representatives.

This Court has recognized and ordered substitution of foreign representatives under similar circumstances, recognizing "by analogy" the relevance of Rule 2012 providing for automatic substitution. *In re Milovanovic*, 357 B.R. 250, 253 (Bankr. S.D.N.Y. 2006), *subsequently aff'd sub nom. In re Agency for Deposit Ins. of Serbia*, No. 08-0299-BK, 2008 WL 4963046 (2d Cir. Nov. 21, 2008) ("The Court will order the substitution . . . in accordance with § 304(b)(3), which permits the Court to grant 'other appropriate relief,' and (by analogy) Bankruptcy Rule 2012, which provides for the automatic substitution of a successor trustee when a trustee ceases to hold office during a case under the Bankruptcy Code."). As explained in *In re Stanford Int'l Bank, Ltd.*, No. 3:09-CV-0721-N, 2012 WL 13093940, at *4-5 (N.D. Tex. July 30, 2012), "the Court is satisfied that Chapter 15 of the Bankruptcy Code

provides the authority for an action to survive the removal of a foreign representative from office" because, in part, "the fact that foreign representatives generally play the same role as trustees in U.S. bankruptcy proceedings—that of estate representatives[.]" In that case, the court granted substitution of a foreign representative after noting the automatic substitution of a successor trustee under Fed. R. Bankr. P. 2012(b). And this Court does not need to confirm any replacement foreign representative, because the debtor under Mexican law can appoint the foreign representative. *See In re OAS S.A.*, 533 B.R. 83, 94 (Bankr. S.D.N.Y. 2015) ("The District Court had identified examples of bankruptcy courts routinely granting recognition to foreign representatives appointed by Mexican debtors.") (citing *In re Vitro S.A.B. de CV*, 701 F.3d 1031, 1047-48 (5th Cir. 2012)).

Ad-Hoc Defendants also argue (Br. 86) that "all claims" should be dismissed for lack of standing. This argument was rejected by *In re Stanford Int'l Bank, Ltd.*, which authorized substitution *nunc pro tunc*, and explained that "the Court is also mindful of the necessity of legal fictions to deal with the practical needs of litigation. Such is the case here where a change in office could have the potential to negate three years of extensive briefing and hearings on the issue." 2012 WL 13093940, at *4 n.12. The same factors disfavor forcing Plaintiffs to recommence litigation in this action, as the Chapter 15 Proceeding started over a year ago and entailed extensive briefing. In any event, the precise name on the complaint bringing claims by a foreign debtor through a foreign representative is immaterial. *See In re British Am. Ins. Co*, 488 B.R. at 236 n.32 ("The complaint is presented in the name of BAICO, rather than in the name of Mr. Glasgow as [foreign representative] for BAICO. The Court sees no material distinction. In this case, BAICO acts solely through Mr. Glasgow.").

IX. THIS ADVERSARY PROCEEDING IS CONSISTENT WITH THE PURPOSE OF CHAPTER 15

The Ad-Hoc Defendants argue (Br. 86) that the adversary proceeding should be dismissed as "inconsistent with the purpose of chapter 15," but this argument is meritless. As the Fifth Circuit explained in *In re Condor Ins. Ltd.*, 601 F.3d 319, 325 (5th Cir. 2010), "[t]he structure of Chapter 15 provides authority to the district court to assist foreign representatives once a foreign proceeding has been recognized by the district court. *Neither text nor structure suggests additional exceptions to available relief*." (emphasis added). Here, this Court has already recognized a foreign proceeding, and Defendants cannot identify any provision of chapter 15 that Plaintiffs' action violates. Nor do they explain how this action falls within any of the enumerated exceptions to available relief. Defendants' failure to argue an applicable exception is fatal to their argument that the relief sought in this action falls outside of chapter 15.

The Ad-Hoc Defendants err in relying on 15 U.S.C. § 1509(b), which refers to "limitations that the court may impose consistent with the policy of this chapter." That provision has not been interpreted as providing a broad policy exception to relief, but rather to recognize the role of comity. *See In re Cozumel Caribe, SA de CV*, 482 B.R. 96, 109 (Bankr. S.D.N.Y. 2012). And as discussed *supra* Section III.B, there is no basis in comity for dismissing this action.

The Ad-Hoc Defendants likewise err in relying on the "zone of interests" idea. Once again, this does not allow for a free-floating inquiry into policy matters. Rather, the "'zone of interests' is an issue that requires [the court] to determine, using traditional tools of statutory interpretation, whether a legislatively conferred cause of action encompasses a particular plaintiff's claim." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014); *see also, e.g.*, *Citizens for Responsibility & Ethics in Washington v. Trump*, 939 F.3d

131, 154 (2d Cir. 2019) (The "zone of interests test asks whether the complaint states an actionable claim under a statute."). And "the test is not meant to be especially demanding." *Citizens for Responsibility*, 939 F.3d at 154 (citation and quotations omitted). Thus, the question is not the zone of interests of Chapter 15 (where a foreign proceeding has already been properly recognized and thus adversary claims can be brought), but the zone of interests for the claims themselves. Here, Plaintiffs clearly have a right to bring the claims at issue, and Defendants identify *nothing* about any particular claim to suggest that Plaintiffs are outside that claim's zone of interests. Indeed, Defendants cite no cases applying the zone of interests test to dismiss claims in a Chapter 15 adversary proceeding.

Even if some policy-based or zone of interests test were applicable, it is readily satisfied here. Chapter 15 provides an expansive policy or "zone of interest" for foreign representatives, evinced by the "exceedingly broad" remedies available to a foreign representative under chapter 15, "since a court may grant 'any appropriate relief' that would further the purposes of chapter 15 and protect the debtor's assets and the interests of creditors." *In re Atlas Shipping A/S*, 404 B.R. 726, 739 (Bankr. S.D.N.Y. 2009). Here, the claims seek recovery from Defendants—the parties who drove the entity Plaintiffs into insolvency and many of whom have never appeared in the Mexican insolvency proceedings, *see* Compl. ¶¶ 252, 255, 324, 343, 349, 394—to augment the debtor's estate. This relief is expressly authorized by chapter 15 and effectuates the core purpose of chapter 15. *See In re British Am. Ins. Co.*, 488 B.R. at 236 ("To the extent this Court has subject matter jurisdiction over a dispute, has personal jurisdiction or *in rem* jurisdiction sufficient to support the action . . . . [T]his Court should exercise that subject matter jurisdiction to assist the foreign proceeding. This is consistent with the primary goal of chapter 15.").

Although Ad-Hoc Defendants emphasize (Br. 88-89) the ongoing Mexican proceedings, that this action pursues causes of action based on similar factual predicates and legal grounds as in the foreign bankruptcy proceeding does not invalidate Plaintiffs' claims. This Court in *In re Octaviar*, 511 B.R. 361, expressly rejected a defendant's attempt to deny recognition of a foreign proceeding under similar circumstances. There, as in this case, "it is precisely because the Foreign Representative[] cannot bring these claims in [the foreign forum] that relief here may be necessary[,]" as "[defendant] is apparently not subject to, and refuses to consent to, the jurisdiction of the [foreign] court." *Id.* at 374. The court in *Octaviar* emphasized the foreign representatives' "common law rights as trustees to bring an action in order to assert claims on behalf of beneficiaries[,]" and adopted the course of action that would "facilitate the Foreign Representatives' ability to bring causes of action they properly identified for the benefit of creditors." *Id.* The court concluded facilitating foreign representatives' claims was "[c]onsistent with the[] purpose[]" of chapter 15 because it would "assist in protecting the interests of the [foreign debtor] and maximizing the value of the [foreign debtor's] assets for the benefit of its creditors." *Id*. at 375. Plaintiffs here possess the same ability to bring causes of action to augment the estate under chapter 15 through the foreign representative, especially as litigation in this forum provides the only means of obtaining relief from the numerous Defendants who have not appeared in Mexico.

Ad-Hoc Defendants cite (Br. 88-90) three cases for the proposition that this Court may limit the foreign representative's right to sue under 11 U.S.C. § 1509(b). All are inapposite. *In re Bancredit Cayman Ltd.*, No. 06-11026 (SMB), 2008 WL 5396618, at *9 (Bankr. S.D.N.Y. Nov. 25, 2008), dismissed the case under the doctrine of *forum non conveniens* because the dispute had "no connection to the forum." This Court is the appropriate forum in this case

because of its significant ties to the underlying action and the lack of an adequate alternative forum. *See supra* Section I.B. *In re Stanford Int'l Bank, Ltd*, No. 3:09-CV-0721-N, 2012 WL 13093940 (N.D. Tex. July 30, 2012), cited for the proposition that this Court may "restrict claims under Chapter 15," (Br. at 88) does not support dismissal of claims on any grounds; in that case, the court merely limited the discovery available to joint liquidators, and conditioned that discovery on the joint liquidators producing similar information. *Id.* at *26. Finally in, *In re Magnesium Corp. of Am.*, 583 B.R. 637, 655 (Bankr. S.D.N.Y. 2018), the court dismissed the claim of an equity holder to object to a creditor's claims because the equity holder mathematically could not receive anything from the estate as the debtor's assets were already accounted for by secured creditors with priority over the general unsecured claims of the equity holder. *Id*. at 651 ("Thus . . . simple arithmetic makes clear that there is zero possibility that there will be a surplus available for distribution to equity."). Plaintiffs' claims here have a real prospect of augmenting the debtors' estates, as this action is brought by the debtors in the foreign proceeding and the foreign representative on behalf of those debtors. This adversary proceeding thus furthers the core purpose of chapter 15 by expanding the debtor's estate and allowing Plaintiffs to recover for the tortious conduct of Defendants that pushed Plaintiffs into bankruptcy.

CONCLUSION

For the foregoing reasons, Defendants' motions to dismiss should be denied.

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